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TAXATION FOR STATE PURPOSES

IN PENNSYLVANIA:

CONTAINING

FULL INFORMATION IN REGARD TO EVERY STATE TAX AND LICENSE,

WITH A HISTORY OF THE LEGISLATION RELATIVE TO EACH;

THE TEXT OF ALL LAWS NOW IN FORCE APPLICABLE THERETO,

AND REFERENCES TO ALL DECISIONS OF THE COURTS BEARING THEREON;

TO WHICH ARE ADDED

CHAPTERS ON LOCAL TAXATION, SUGGESTIONS TO OFFICERS OF CORPORATIONS AND HINTS TO LEGISLATORS.

BY

FRANK MARSHALL EASTMAN,
ATTORNEY-AT-LAW.

"In fiscal matters, as in others, juridicial considerations should prevail over economic and political ones. As, however, the rigorous application of the principle of justice meets with very serious difficulties, both in the selection and the valuation of taxable objects, and by reason of the incidence and repercussion of taxes, which cannot always be exactly calculated, *it follows that in practice we must be satisfied with an approximation to equity.*"

Scienza delle Fianze, DR. LUIGI COSSA.

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TO THE MEMORY

OF

HON. ANGUS CAMERON,

LATE A UNITED STATES SENATOR FROM WISCONSIN.

(*Obit.* A. D., 1897.)

A WISE STATESMAN, A RIPE LAWYER AND A JUST,
UPRIGHT AND KINDLY MAN,

THIS BOOK

IS REVERENTLY INSCRIBED

BY

THE AUTHOR.

PREFACE.

THE writer of this work has, for a number of years past, as General Assistant in the Department of the Auditor-General of Pennsylvania, carried on, to a very large extent, the correspondence of that Department upon subjects relating to taxation. In so doing he has been required to answer a vast number of inquiries touching every conceivable feature of taxation for State purposes. This experience has not only made him, as he is vain enough to believe, somewhat familiar with that subject, but it has strongly impressed him with the very general want of information thereupon, which obtains not only with business men but with lawyers as well.

That there should be a great lack of information upon this subject is not strange. The tax laws of the State are very numerous, cover a great space of time, and are often obscure and contradictory in their provisions. They cannot be properly construed without a knowledge of the decisions of the courts relating thereto, and these decisions number several hundreds. The truth is, tax law is as much a specialty as admiralty or patent law. With the exception of a pamphlet by a Mr. Taylor, which gave the text of certain tax laws, wholly without commentary, which work is now entirely obsolete and of Mr. Shapley's *Revenue Act of 1889*, which, as its name implies, deals only with a single revenue act, there has been no book upon the subject of State taxation which one could consult.

Great interest in the subject of taxation has been shown of late years throughout the United States, and frequent inquiries have been received, from time to time, by State officers from persons without the State, as to the system of taxation obtaining in this Commonwealth. There has, hitherto, been no means of supplying such persons with an accurate account of our system.

Repeated attempts have been made of late years to materially amend, or, rather, to revolutionize our tax laws, while it has been

quite apparent that neither the supporters of the proposed legislation, nor the legislators themselves, very well understood what the system was which it was proposed to change. These and other facts led the author to believe that a work such as he now presents would fill a "long-felt want," and it is hoped that the book will meet the needs, equally, of business men, lawyers, officers of corporations, State and county officers, legislators, and students of taxation generally.

In a work dealing with so many and such complicated subjects, it would be folly to suppose that all omissions or errors have been avoided. Such doubtless exist, and the author respectfully requests that members of the legal profession, or others, who may detect any errors or omissions, will be so good as to call his attention thereto, that they may be corrected or supplied in another edition, should the work achieve one.

It will be understood that, although the author has been an employé in the Auditor-General's Department, this book is not to be considered as in any wise an official publication for which that Department is at all responsible. The practice and the rulings of the Department are, in all cases, correctly given; but, in some instances, the conclusions are solely those of the author. As authorities are always given, however, the reader will have it within his power to judge of the justness of such conclusions, and, if he desires, to substitute his own therefor.

The author has added a brief chapter on Local Taxation in Pennsylvania, for the information of non-residents of this Commonwealth who may wish to obtain a general idea of our complete tax system. He has also added a chapter of "Instructions to Officers of Corporations," containing matters which may be of use to such officers, and has concluded with some "Hints to Legislators," pointing out such legislation as his own experience has shown to be desirable.

The author has made no attempt to present an imposing array of decisions, having in mind the awful example of a well-known First Comptroller of the United States Treasury Department. This laborious and conscientious officer used to have his long and elaborate decisions printed and bound as *Blank's Reports, Vol. I.*, and so on, although these decisions were not binding on his successors, on the public generally, nor even on himself. He would gravely state some well-known and indisputable principle of law,

such as "A principal is liable for the acts of his agent within the scope of his agency," and then would follow some twenty or thirty citations to decisions under the common, canon, and civil laws, with references to the *Pandects* of Justinian, the *Breviarium Aniani*, the *Assizes de Jérusalem*, *Fleta*, and the *Code Napoléon*.

There are hundreds of decisions bearing upon the tax laws of this State, but many of them are obsolete, owing to changes in those laws, others have been overruled, and still others are affirmed in later cases. Enough decisions have been cited for the purposes of the text, and, on referring to those cited, other decisions will be found mentioned therein.

FRANK M. EASTMAN.

HARRISBURG, JANUARY, 1898.

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HISTORICAL SKETCH

OF

TAX LEGISLATION IN PENNSYLVANIA.

Prior to 1831 Pennsylvania could hardly be said to have any system of State taxation. For many years the expenses of State government were so small as to permit of being almost wholly defrayed by the revenue derived from sales of lands, from the dividends paid on stocks of corporations in which the State had invested, and from similar sources. The Commonwealth's quota of the Revolutionary War debt was apportioned among the counties. In 1814 a tax was laid on bank dividends, and, prior to 1826, this tax, with certain taxes on court officers, constituted the entire State taxation, save in the way of licenses. In 1826 the tax on collateral inheritances was imposed, which is still in existence.

In 1831 the first act creating anything like a system of State taxation was passed. It taxed ground-rents, moneys at interest, moneys owing by solvent debtors, mortgages, and corporation stocks on which dividends were paid, public stocks, except those issued by the State, and pleasure carriages, one mill on the dollar of the value thereof annually. This tax was collected by the county officers for the use of the Commonwealth. In the same year the commissioners of the several counties were required to increase the county rates by one mill upon the dollar of the value of all real and personal property subject by law to local taxation, and to pay the additional amount, raised in this manner, for the use of the State. Both the act providing for this taxation, and the other Act of 1831, above referred to, were limited in their operation to five years, it being generally believed that, at the expiration of that time, the income from the gigantic public works, consisting of canals, railroads, etc., which were then in course of construction, would be sufficient to defray all expenses of State government. Both Acts of 1831 were repealed by Acts of February

18, 1836, and March 10, 1836. From 1836 to 1840 the Commonwealth realized certain large sums from the United States Bank, incorporated as a State bank, after the expiration by limitation of its charter from the General Government, and from the United States, the surplus then existing in the United States Treasury being divided among the several States. At the beginning of 1840 the taxes on bank dividends, collateral inheritances, writs, etc., and licenses, were the principal sources of State revenue.

The debt created for the erection of the public works had by this time assumed such proportions, and the interest charge thereon was so onerous, that it soon became apparent that the Commonwealth could not look to the income derived from such works as a means of defraying the expenses of government; and the sale of the works began to be agitated. At this juncture was passed the Act of June 11, 1840, which imposed a tax of one mill on the stock of banks and other institutions making or declaring a profit; half a mill on certain personal property, a small tax on household furniture, pleasure carriages, and watches, and a tax on the salaries of the officers of the State. It was estimated that these taxes would produce five or six hundred thousand dollars per annum. As the interest charge on the public debt was alone $1,600,000 for that year, however, this act proved ridiculously insufficient for the purposes which it was intended to attain, and, in 1843, the Commonwealth defaulted in the payment of interest to its creditors.

The storm of criticism which followed this violation of faith resulted in awakening all citizens to the demands of the hour, and on April 29, 1844, an act was passed, very sweeping in its provisions, which forms the basis of the tax system now in existence.

The Act of April 29, 1844, created the existing taxes on capital stock and on personal property. The State tax on real estate, therein provided for, was repealed by Act of February 23, 1866, (P. L., p. 83), and the tax on horses and cattle, for State purposes, by Act of March 21, 1873 (P. L., p. 46). The tax on watches, household furniture, and pleasure carriages was repealed by Act of May 13, 1887 (P. L., p. 114). The said Act of 1844 also originated the practice, universally observed since, in subsequent legislation, of taxing corporations directly through State officers, and personal property through the medium of county officers, acting, for that purpose, as agents of the State.

From the inauguration of the new system of taxation by the Acts of 1844 and 1846, down to the beginning of the Civil War, no material changes were effected in that system. The taxes on personal property, capital stock of corporations, bank stock and dividends, writs, deeds, etc., fees of public officers, and collateral inheritances, and the various kinds of licenses, constituted, during that time, the main sources of revenue.

The breaking out of the Rebellion necessitated greatly increased expenditures, and, to meet these, new taxes were imposed. Among these were the tax on the net earnings or income of private bankers and brokers (1861); the tax on the gross receipts of transportation companies (1866); tax on the net earnings or income of corporations (1864); tax on tonnage of transportation companies (1864); tax on the mining of coal (1867); and tax on corporate loans, which was not, however, as originally created, a new tax, but merely a new way of taxing certain classes of personal property (1864).

After the close of the war many of these new taxes were abolished, among these the tax on corporate loans, the tax on gross receipts of transportation companies, and the tax on the mining of coal, by the Acts of March 21, 1873, and April 24, 1874, while, by subsequent legislation, the tax on the net earnings of corporations was gradually narrowed in its application until it was limited as at present, and the tax on tonnage, materially modified, was gradually diminished until its collection ceased, under the provisions of the Act of June 7, 1879, in 1881, by limitation.

With the development of the State, increased revenues again became necessary, and in 1877 the tax on gross receipts of transportation companies was revived, and, by the same act, a new tax, that upon the gross premiums of domestic insurance companies, was created.

It was also attempted, by the Revenue Acts of 1879 aud 1881, to revive the tax on corporate loans, but, owing to the wording of the sections of said acts providing for the imposition of this tax, the Supreme Court declared the tax invalid, and it was not until the passage of the Revenue Act of June 30, 1885, that the tax on corporate loans as it now exists was created.

The said Act of 1885, by its twentieth section, also provided for an innovation in the matter of taxing the capital stock of corporations, which relieved manufacturing corporations from the payment of said tax. The Act of 1879 had contained a proviso that limited

partnership associations engaged in manufacturing or in mercantile business should be relieved from the tax on capital stock, but the Act of 1885 was the first to contain a general provision of that nature. That exemption has been continued by all subsequent tax legislation, modified, however, so as to relieve only so much of the capital of a manufacturing company from taxation as is invested in property used exclusively in manufacturing.

From 1885 to 1897 no new tax was created, all tax legislation, during that period, being in the nature of amendments to the laws relating to already existing taxes.

At the session of 1897 new taxes were created on direct inheritances, on the receipts of express companies (in addition to the tax on gross receipts, to which they were already subject), and on the matured stock of building and loan associations. The system of taxation of bank stock was also materially changed. The laws relating to the licenses of distillers, brewers, etc., were also amended.

The foregoing is a short history of the legislation relating to taxation. A complete legislative history of each tax will be found in the chapter treating of such tax, to which the reader is respectfully referred. A brief account of the attempts which have been made of late years to reform or revolutionize the tax system of the State, and which have not resulted in legislation, may properly follow.

At the session of 1887 an act was passed which would have materially changed the tax system of the State, but which failed to become a law, as will be remembered, owing to the failure of the President *pro tempore* of the Senate to affix his signature thereto. A tax commission was created by law at the same session of the Legislature, which reported a revenue bill, a principal feature of which was the substitution of a single tax on corporations, to take the place of the existing taxes thereon on capital stock, gross receipts, and loans or bonded indebtedness. The Legislature took no action on the bill so reported, and, at the session of 1889, another tax commission was created. The members thereof failed to agree upon any measure, and made individual reports, suggesting various changes in methods of taxation, none of which was made.

At almost every session of the General Assemby for the past eight or ten years persistent efforts have been made to secure the passage of bills, usually known as "Granger Bills," because very

generally supported by members of the order of Patrons of Husbandry, so drawn as to effect sweeping changes in our tax legislation. As a concession to the supporters of these measures, the Auditor-General was instructed by resolution of the General Assembly, at the session of 1895, to procure from all corporations in the State, reports made in the manner required by the tax bill then pending, and to make feigned settlements thereon, in order to ascertain whether the proposed measure would supply a sufficient amount of revenue to meet the expenses of the State government; or, in other words, whether the proposed system would produce an equal amount of revenue with the old. Such reports were to be obtained for two consecutive years. They have already been obtained for one year, and have recently been required for the second year. It is understood that the statistics thus far obtained have failed to show that the proposed measure would produce the necessary amount of revenue.

In 1892 a Pennsylvania Tax Conference was formed by the representatives of various important interests in the State, an unofficial but highly respectable body, owing to the talents and earnestness of the members thereof. The object of the commission was to supply statistics upon which discussions of proposed changes of taxation might be based. It has been mainly owing to the lack of such data that former attempts to agree upon a revision of the tax laws have failed. Two preliminary reports were made by this conference, one containing much valuable information relative to objects of taxation in Pennsylvania, and the other giving a comparative statement of the tax systems of all other States. The commission finally reported the revenue bill introduced at the session of 1895, above referred to, data concerning the operations of which, if it become a law, are yet being procured. Owing to the death of Joseph D. Weeks, of Pittsburg, the chairman of the conference, its operations have of late languished, if, indeed, its organization may not be considered as practically dissolved.

In closing this sketch it may be said that, while the State tax system of Pennsylvania can doubtless be improved in many respects, the system itself is a very excellent one. The burdens of taxation for State purposes are almost wholly placed upon corporations, leaving individual taxables subject to taxation for local purposes only, except that the mortgages, bonds, and other classes

of personal property taxable under the laws of the State held by them pay a State tax, but three-fourths of even this tax is returned to the counties, to relieve the burdens of local taxation.

The State tax laws of Pennsylvania are not only, in the main, just, but they have been so thoroughly construed by hundreds of decisions of the courts, that but little opportunity exists for disputing over the proper interpretation thereof.

Before wholly abandoning a system so long established, so thoroughly interpreted, and so generally equitable, for the purpose of adopting any untried system devised by theorists, every feature of which must be construed by the courts, it is believed that thoughtful men will require nothing short of an absolute demonstration that the proposed system will prove in all important respects the superior of the old.

TAXATION FOR STATE PURPOSES IN PENNSYLVANIA.

CHAPTER I.

GENERAL PROVISIONS RELATIVE TO THE SETTLEMENT OF PUBLIC ACCOUNTS AND TO CORPORATIONS.

PUBLIC ACCOUNTS.

ALL settlements for State taxes are made by the Auditor-General and approved by the State Treasurer, under the provisions of the Act of March 30, 1811 (P. L., p. 145), which provides, *inter alia*, as follows:

"Section 3. That when any public account is examined and adjusted, entered in the books of the office and signed by the Auditor-General, it shall be submitted, together with the vouchers and all other papers and information appurtenant thereto, to the State Treasurer for his revision and approbation, and in order that the State Treasurer may be enabled to revise and examine the accounts so submitted to him, he is hereby invested with powers similar to those invested in the Auditor-General by this act."

"Section 5. That the State Treasurer shall return all accounts and vouchers and other papers appurtenant thereto, within a reasonable time, to the Auditor-General, signed by him, if he approve thereof; but, if he disapprove of any account, he shall state in writing the reasons for such disapprobation, and if, upon reconsideration of the account so disapproved by the State Treasurer, the Auditor-General and State Treasurer cannot agree, it shall be the duty of the Auditor-General to lay the account and vouchers, and other papers appurtenant thereto, before the Governor, together with his own reasons and the reasons of the State Treasurer respecting the same, and the decision of the Governor thereon shall be conclusive. . . . ."

NOTE.—The settlement of taxes against corporations by the Auditor-General and State Treasurer, being a purely ministerial act, may be made by clerks acting respectively under the direction and by the authority of the Auditor-General and State Treasurer. See Phila. & Read. R. R. Co. *v.* Com., 104 Pa., 86; Hamilton Wheel Co. *v.* Com., 12 W. N. C., 328.

Copies of Settlements to be Furnished to Debtors. "Within thirty days after the settlement of an account agreeably to this

act, on which a balance appears to be due to the Commonwealth, the Auditor-General shall send, by mail or otherwise, to the person or persons indebted, a copy thereof under his hand and seal of office; and if the amount or balance of such account shall not be paid into the State Treasury within six months after the date of settlement, the Auditor-General shall have a second official copy of all such accounts made and put into the hands of the State Treasurer." Section 9, Act of March 30, 1811

NOTE.—This law has been superseded in its application to almost all taxes, by special provisions relating thereto. The practice is to send copies of settlements to the persons, or to the treasurers of the corporations, against which they are made, as soon as the settlements have been approved by the State Treasurer. Persons or corporations then have sixty days within which to take an appeal from the settlement, if they see fit to do so; so that whenever subsequent acts do not provide a particular time for the payment of a given tax, taxes may be considered as due and payable after sixty days from the date of the receipt of the "notice of such settlement" and suit for the recovery thereof may then be instituted.

The copy is presumptive evidence that the account was settled (Hays *v.* Com., 27 Pa., 272), and is sufficient evidence, unrebutted, to enable the Commonwealth to recover the amount stated therein. Com. *v.* Farrely, 1 P. & W., 52.

Appeals from Settlements. Persons or corporations dissatisfied with settlements of public accounts made against them by the Auditor-General and State Treasurer are permitted to appeal from such settlements to the Court of Common Pleas of Dauphin County. Such appeal must be filed in the office of the Auditor-General within sixty days after receipt of notice of such settlement, and be accompanied by a specification of objections to the said settlement; and the parties appealing must enter sufficient security within ten days after filing the appeal, to prosecute the appeal and pay all costs. Section 11, Act March 30, 1811 (P. L., p. 148).

NOTE.—The appeal and specifications are recorded in the office of the Auditor General, and then filed by the employés of that office with the Prothonotary of the Court of Common Pleas of Dauphin County. The custom is to send the bond directly to said Prothonotary. Said bond must be approved, as to the sufficiency of its sureties, by the Judge of the Court of Common Pleas of said county, but the practice is to have the bond approved by the Judge of the Court of Common Pleas of the county in which the sureties thereto are resident, and the Dauphin County Judge accepts this approval.

Procuring Testimony Relative to Public Accounts. The Auditor-General and State Treasurer may compel the attendance, at their respective offices, of all persons whose testimony may be needed in the settlement of any account, or, if any such person shall reside so far from the seat of Government as to make such action advisable, the Auditor-General may procure his testimony, to be taken before any judge of a court of common pleas or justice of the peace, on a commission, with interrogatories annexed, issued under the hand and seal of office of the Auditor-General. Sec-

tions 2 and 3, Act March 30, 1811 (P. L., p. 145). For the method of procuring the attendance of said witnesses, see Sections 2 and 3 of the Act of March 30, 1811, above referred to.

If any person shall refuse to exhibit his account, or answer any question relating thereto, put to him by the Auditor-General, after having been required to attend at the office of the Auditor-General on his summons, the Auditor-General shall, unless such question shall tend to incriminate the witness, have the power to commit such person to the common jail of the county wherein the seat of Government shall then be, to be held until such person comply with said act, or be otherwise discharged by due course of law. Section 4, Act March 30, 1811 (P. L., p. 146).

Estimated Settlements. If any person shall neglect or refuse to furnish his account, the Auditor-General and State Treasurer may, if they prefer, instead of compelling the exhibition of such account, make an estimated settlement from the previous account settled, or from any other reasonable data, of the probable amount of the account of such delinquent, provided that they add to every such estimated account not exceeding fifty per cent. on its amount, to include any losses which might otherwise accrue to the Commonwealth from such neglect or refusal to furnish accounts. Section 14, Act March 30, 1811.

The party should be summoned, or in some way have notice (Com. *v.* Fitler, 12 S. & R., 227), but it is not imperative (Hays *v.* Com., 27 Pa., 272). In making such estimated settlement it is not necessary that a preliminary notice of the time of settling the account should be given. Com. *v.* Runk, 26 Pa., 235.

NOTE.—Special provisions are made by law for the settling of estimated accounts for certain taxes against companies neglecting or refusing to make reports for the settlement of such taxes. Such a special provision is that contained in the Act of 1891, providing for the making of estimated settlements for tax on capital stock against companies neglecting to make capital stock reports. Where special provisions for the making of estimated settlements exist, it is probable that these supersede the general provision above given.

Resettlement of Accounts. "The Auditor-General and State Treasurer at the request of each other, or of the party, shall revise any settlements made by them, except such as have been appealed from, or which by any other proceedings have been taken out of their offices, if such request be made within twelve months of the date of settlement, but after that time no settlement on which a final discharge has been made shall be opened." Act March 30, 1811, Section 16.

But the Auditor-General, State Treasurer, and Attorney-General may revise any settlement made with any person or body corporate by the Auditor-General, when it may appear from the accounts in his office that the same has been erroneously or illegally made, and resettle the same according to law, and credit or charge, as the

case may be, the amount resulting from such resettlement upon the current accounts of such persons or body politic. Act of April 8, 1869 (P. L., p. 19). When acting in this capacity these officers are known as the Board of Public Accounts, although this title is unknown to the law.

NOTE.—Settlements of more than one year's standing cannot be resettled except by the Board of Public Accounts, and even where no accounts have been settled for past years, if it appear that they were not settled because the Auditor-General declined to settle them, or doubted of his authority to do so (and not through the negligence or laches of that officer), settlement for taxes for said years can only be made by the Board of Public Accounts, and cannot be made by the Auditor-General and State Treasurer in the usual manner. Com. *v.* Penna. Company, 145 Pa., 266.

The Board of Public Accounts, under the Act of April 8, 1869 (P. L., p. 19) has the authority to revise and reopen illegal settlements of the Board of Revenue Commissioners. Lackawanna County *v.* Com., 156 Pa., 477.

Taxes Made a Lien. All taxes imposed by the Act of June 1, 1889, are "a lien upon the franchises and property, both real and personal, of corporations, companies, associations, joint-stock associations, and limited partnerships, from the time the said taxes are due and payable, and whenever the franchises of a corporation, company, etc., shall be sold at a judicial sale, all taxes due the Commonwealth shall be first allowed and paid out of the proceeds of such sale, before any judgment, mortgage, or other claims which shall be entered of record or become a lien after the passage of this act." Act of June 1,1889, Section 31 (P. L., p. 420). See also Sec. 14, Act June 7, 1879 (P. L., p. 112).

"The Auditor-General is hereby authorized and required to transmit to the prothonotaries of the respective counties, to be by them entered of record, certified copies of the liens which may hereafter arise by virtue of the twelfth section of the Act of March 30, 1811, entitled 'An act to amend and consolidate the several acts relating to the settlement of the public accounts . . .' as soon as the same are settled and entered in books of the accounting officers, as directed by said act." Act of April 14, 1827 (P. L., p. 471).

NOTE.—To entitle a tax lien under the Act of 1879 (which is the same in this respect as the Act of 1889, above quoted) to priority, a certified copy must be filed under the Act of 1827. The fourth section of said Act of 1827, requiring the filing of a certified copy of a tax lien, "is not repealed by Section 14 of the Act of June 7, 1879. The statutes are *in pari materia*. . . . The Acts of 1811 and 1879 [and that of 1889] include every form of liability for money retained from the public treasury." Wm Wilson & Sons, Silversmith Co.'s Estate, 150 Pa., 285.

In default of the filing of a certified copy of a tax lien the Commonwealth's claims are entitled to no preference over *other lien* claimants. Commonwealth's Ap., 4 Pa., 164; Arnold's Est., 46 Pa., 277.

The Commonwealth is entitled, however, to a priority of payment for taxes due, even where no copy of the lien has been filed under the provisions of the Act of 1827, *where there are no other lien creditors.* Gas Stove and Meter Company's Estate, 166 Pa., 298.

Taxes to Bear Interest. "In the settlement by the Auditor-General and State Treasurer of all accounts for taxes due the Commonwealth, they shall charge interest upon the amount of tax or balances found due the Commonwealth at the rate of 12 per cent. per annum from thirty days after the time said taxes or balances become due and payable to the time of settlement of the same; and all balances due the Commonwealth on accounts settled by the Auditor-General and State Treasurer shall bear interest from sixty days after date of settlement at the rate of 12 per cent. per annum until the same are paid; and any judgment recovered thereon shall bear interest at the rate of 12 per cent. per annum until paid; and the payment of such interest shall not relieve any corporation from any of the penalties or commissions prescribed by law for neglect or refusal to furnish reports to the Auditor-General, or to pay any claim due to the Commonwealth from such corporation: Provided, that the Auditor-General shall first have sent to such corporation a statement of the amount due." Sec. 30, Act of June 1, 1889 (P. L., 420). This is a re-enactment, in almost the exact language, of Section 13 of the Act of June 7, 1879. See also Section 3, Act of April 9, 1867 (P. L., 58); also Section 35, Act March 30, 1811.

NOTE.—The section above quoted provides for the payment of interest on two classes of accounts—one class where taxes or balances can be considered as "due and payable" before settlement thereof has been made by the accounting officers; and the other class composed of taxes and claims which cannot be said to be due and payable until settlement has been made therefor by the accounting officers. In the opinion of the writer all taxes whatever are included in the second class, and cannot be said to be due and payable until settlement has been made therefor by the accounting officers. This remark does not refer, of course, to taxes which are not settled by those officers. See Easton Bank *v.* Com., 10 Barr, 451; Com. *v.* Standard Oil Co., 5 Out., 119, 150; Del. Div. Canal *v.* Com., 14 Wright, 399; Second and Third Street Ry. *v.* Phila., 1 Smith, 465.

Receipts for the Payment of Taxes. No such receipt shall be good or available in law unless signed by the State Treasurer, or by some person known to be in his employ, and for whom he is answerable. Section 36, Act March 30, 1811. All receipts for money paid into the State Treasury must be countersigned by the Auditor-General. Section 8, Act of April 10, 1849 (P. L., 361).

Compromise of Taxes. "That it shall be lawful for the State Treasurer and Auditor-General to settle and adjust with any corporation, whether domestic or foreign, that has heretofore carried on business in this State, and which is now indebted to the Commonwealth, but has gone into liquidation, become insolvent, or ceased to carry on business, and which has no known or available property in this or any other State that may be seized in the execution by process thereof issued out of any of the courts in this or any other State, [and they] may compound or settle any taxes due by the same to this Commonwealth on such terms as may be

adjudged by said officers to be for the best interests of the Commonwealth; Provided, that such extension, composition, or settlement shall be approved by the Attorney-General." Act of June 10, 1881 (P. L., p. 114).

Indebtedness to the State may be Paid by Instalments. "The State Treasurer, with the approbation of the Auditor-General, is hereby authorized at any time after the final settlement of any account, if he deem it conducive to the public interest, to compromise with any public debtor, or his sureties, for the payment of the debt by instalments; Provided, that the amount of the debt be not lessened, nor the security of it impaired, and that both principal and interest, with costs, shall be paid within seven years from such compromise." Act March 30, 1811, Sec. 13.

Court of Common Pleas of Dauphin County given Jurisdiction in Cases Relating to Public Accounts. "The Court of Common Pleas of the County of Dauphin is hereby clothed with jurisdiction throughout the State for the purpose of hearing and determining all suits, claims, and demands whatever, in law or equity, in which the Commonwealth may be the party plaintiff, for accounts, unpaid balances, unpaid liens, taxes, penalties, and all other causes of action, real, personal, or mixed." Sec. 1, Act of April 7, 1870 (P. L., 57).

It will be remembered that the foregoing are all *general* provisions. Wherever these have been modified or superseded by special laws, references will be found thereto under the head of the respective taxes in the cases of which the special provisions have been made.

CORPORATIONS.

Registration. "That hereafter no limited partnership, bank, joint-stock association, association, *corporation, or company* whatsoever, formed, erected, incorporated, or organized by or under any law of this Commonwealth, general or special, or formed, erected, incorporated, or organized under the laws of any other State, and doing business in this Commonwealth, *shall go into operation,* without first having the name of the institution or company, the date of incorporation or organization, the act of Assembly or authority under which formed, incorporated, or organized, the place of business, the post-office address, the names of the president, chairman, secretary, and treasurer or cashier, and the amount of capital authorized by its charter, and the amount of capital paid into the treasury, *registered in the office of the Auditor-General;* and every limited partnership, bank, association, joint-stock association, company, or corporation whatsoever, now engaged in business in this Commonwealth, shall within ninety days after the passage of this act, register as herein required in the office of the Auditor-General; all the corporations, companies, associations, and limited partnerships aforesaid shall annually hereafter notify the

Auditor-General of any change in their officers; and any such institution or company which shall neglect or refuse to comply with the provisions of this section shall be subject to a *a penalty of five hundred dollars*, which penalty shall be collected on an account settled by the Auditor-General and State Treasurer in the same manner as taxes on capital stock are settled and collected." Sec. 19, Act June 1, 1889 (P. L., p. 420).

See Sec. 1, Act April 21, 1858 (P. L., p. 419); Sec. 1, Act May 1, 1868 (P. L., p. 108); Sec. 1, Act April 24, 1874 (P. L., p. 68); Sec. 1, Act June 7, 1879 (P. L., p. 112).

Certification of Limited Partnership and Joint-Stock Associations. "Section 1. That from and after the passage of this act it shall be the duty of the recorder of deeds of the several counties of this Commonwealth, upon the filing in their respective offices of the articles of association of any limited partnership association or joint-stock association, to certify to the Auditor-General, upon a blank form which shall be prepared and furnished them by the Auditor-General, the following information relative to said limited partnership association or joint-stock association filing its articles of association as aforesaid.

"1. Name of association.
"2. Purpose for which organized.
"3. Term for which organized.
"4. Location of principal office.
"5. Date of organization.
"6. Authorized amount of capital stock.
"7. Name and post-office address of chairman.
"8. Name and post-office address of secretary.
"9. Name and post-office address of treasurer.

"For their services in furnishing the Auditor-General with the said information, the said recorders of deeds shall be paid at the rate of twenty-five cents for each limited partnership or joint-stock association, the information concerning which they shall have certified to the Auditor-General in the manner above provided for. The said fee of twenty-five cents shall be paid to the said recorders of deeds by the limited partnership associations or joint-stock associations at the time of filing the articles of association thereof, to be in addition to the fees now prescribed by existing laws for the filing and recording of the same." Act of June 24, 1895 (P. L., 230).

This act does not relieve limited partnerships and joint-stock associations from registering in the office of the Auditor-General under the foregoing 19th Section of the Act of June 1, 1889.

Where limited partnership associations formed under the Act of June 2, 1874, do not, in all important respects, comply with the requirements of said Act, they are not limited partnership associations at all, but partnerships. Van Horn *v.* Cochran, 127 Pa., 255; Sheble *v.* Strong, 128 Pa., 315. Limited partnership

associations will, however, be held to be such, and reports and taxes will be required therefrom, until it judicially appears that they have failed to comply with the requirements of the Act of June 2, 1874, to such an extent as to render them nothing more than partnerships.

Change of Location of Office, etc. Any corporation of Pennsylvania may change the location of its principal office, or the place of its annual or other meetings of stockholders, or the time for holding its annual meetings, or either or all, by resolution of its board of directors, adopted by a two-thirds vote thereof, approved at any annual or special meeting of stockholders by a two-thirds vote. Upon such approval the president of such corporation is required to file in the offices of both the Auditor-General and the Secretary of the Commonwealth a report, under the seal of the company, specifying the change or changes so made. Act of June 8, 1893 (P. L., p. 355).

Forfeiture of Charter by Non-user. Corporations formed under the General Incorporation Act of 1874 must begin the construction of their plants within two years from the date of their charters, and finish the same within five years from said date, or their charters are forfeited. Act April 17, 1876 (P. L., p. 37). In such cases the charters are forfeited by mere operation of the act, and without the necessity for taking any legal steps to enforce the forfeiture. Com. *v.* Water Co., 110 Pa., 391.

Corporations of the second class, incorporated under the provisions of the Act of April 29, 1874, or any of its supplements, which shall not, within two years from the date of their letters patent, proceed in good faith to organize and do the things contemplated by their charters, and have paid up at least one-fourth of their capital stock, shall be held and deemed to have forfeited their charters, and the Attorney-General shall, on the application of any citizen, take the proper steps to forfeit and vacate said charters. Act of June 13, 1883, Sec. 5 (P. L., p. 123).

NOTE.—This provision would seem to exist concurrently with that preceding it, in the Act of 1876, there being no repealing clause in the Act of 1883, and the two provisions not being necessarily in conflict.

Dissolution of Corporations. Corporations are dissolved by decree of the court of common pleas of the proper county. See Act of April 9, 1856 (P. L., p. 293) and clause 10 of Sec. 39, Act of April 29, 1874 (P. L., p. 103). Section 15 of the Act of June 7, 1879 (P. L., p. 112) provides:

"That no corporation or limited partnership made taxable by this act shall be dissolved by the decree of any court of common pleas until all taxes due the Commonwealth have been fully paid into the State Treasury, and the certificate of the Auditor-General, State Treasurer, and Attorney-General to this effect filed in the proper court, with the proceedings for dissolution." These cer-

tificates are issued from the Department of the Auditor-General. It is unnecessary to write to the State Treasurer or to the Attorney-General when applying therefor. Copies of the decrees dissolving corporations should be promptly filed in the office of the Auditor-General on the issue of the same. The above is re-enacted by Sec. 32, Act June 1, 1889.

Dissolution of Limited Partnership Associations. Such associations may be dissolved, first, whenever the period fixed for the duration of their association expires; second, whenever by a majority vote, in number and interest, it shall be so determined, and notice of such winding up shall be given by publication in two newspapers published in the proper city and county, at least six consecutive times, and immediately upon the commencement of said advertising said association shall cease to carry on its business, except so far as may be required for the beneficial winding up thereof. Sec. 8, Act of June 2, 1874 (P. L., p. 271). See Tendel *v.* Park, 154 Pa., 36.

Limited Partnership Associations, formed under the provisions of the Act of June 2, 1874, must not be confounded with limited partnerships formed under the provisions of the Act of March 21, 1836 (P. L., p. 143). The former are corporations the liability of the shareholders in which is limited to the par value of the shares of stock, or interests, held by them in such associations, while the latter are merely partnerships in which the liability of the partners is limited. Limited partnership *associations* are required to register in, and make reports to, the Auditor-General's Department, while limited *partnerships* are neither required so to report nor to register. For purposes of taxation limited partnerships are considered exactly like individuals or ordinary partnerships. See opinion of Attorney-General rendered the Auditor-General, dated April 30, 1896.

Changes of Names of Corporations. It has been customary for the names of corporations to be changed, when desired, by a decree of the proper court of common pleas for that purpose had and obtained, under the provisions of the Act of April 20, 1869 (P. L., p. 82). It has recently been held, however, in the case of Ft. Pitt B. & L. Assn. *v.* Model Plan B. & L. Assn., 159 Pa., p. 308, that since the passage of the Act of June 13, 1883 (P. L., p. 122), which authorizes corporations desiring to amend or alter their charters to apply to the Governor therefor, such changes can only be made by the Governor, under the authority of said Act of 1883.

In the matter of the petition for change of name of The McCormick Company to "The Paxton Steel and Iron Company," Dauphin C. P., No. 122, Jan. T., 1896 (unreported), the court says:

"Since the passage of the Act of 1883 (P. L., p. 122) the courts of common pleas have no power to change the name of a corporation of the second class."

Notice of intention to apply for change of the name of a corporation must be given to the Auditor-General's Department, and proof of such notification must be given in the proceedings therefor. See Act of April 20, 1869 (P. L., p. 83). It will be observed that the first portion of the first section of said Act is repealed by the Act of June 13, 1883, as above stated. The law, therefore, seems to be, that the names of corporations of the second class—*i. e.*, those organized for profit, can be changed only by the Governor of the State, under the Act of 1883; while the names of corporations of the first class—*i. e.*, those not organized for profit—are changed by the courts. See Ft. Pitt B. & L. Assn. *v.* Model Plan Assn., *supra*, in support of this conclusion. Whether a notice of intention to apply for change of name must now be given to the Auditor-General under the provisions of the Act of 1869, where the company applying for such change is one of the second class, has never been decided. In the case last cited the court says:

"The Act of 1883 revised the whole subject-matter of the Act of 1869, and was evidently intended as a substitute, so far as related to corporations of the second class. A new system was devised, and in it a tribunal was created for the amendment of charters. The evident purpose of the Legislature in passing the Act of 1883 was to provide a new, uniform, and exclusive method for the amendment of charters of corporations of the second class."

The Act of 1883 provides that before applying to the Governor for change of name "notice of the intention to apply therefor shall be given in two newspapers of general circulation, printed in the county wherein the principal office of said corporation is located, once a week for three weeks," etc.

It is, therefore, probable that this public notice was intended to take the place of the notice required to be given by the Act of 1869, and that corporations of the second class need not, when applying for a change of name, give notice to the Auditor-General of their intention to apply for such change. Corporations of the first class, however, are still required to give such notice, under the provisions of the Act of 1869, although no useful purpose whatever is subserved by so doing.

Settlements of Taxes Against Corporations. Corporations subject to taxation for State purposes are furnished by the Auditor-General with the proper blanks upon which to make their reports a short time before the expiration of the tax-years for which they are required to report. The blanks are accompanied with necessary instructions for their proper execution. The reports are required to be made under oath of one or more of their officers, according to the nature of the tax, and returned to the Auditor-General's Department. They are there examined and settlements are made thereon for such taxes as may appear therefrom to be due. Where corporations neglect or refuse to make their reports, the accounting officers can either make estimated settlements against

such companies, or compel the attendance of the officers thereof, with their books and papers, at the offices of said accounting officers, there to give such information as may be essential to the proper making of settlements against the said companies.

Copies of all settlements are sent to the treasurers of the corporations against which they are made, and said companies then have sixty days' time within which to take an appeal from the settlements to the Court of Common Pleas of Dauphin County, which, as we have already seen, has jurisdiction of such matters. If no appeal be taken within the period named, the settlement becomes final, and payment thereof cannot be contested. The method of proceeding in the taking of appeals has been already explained in this chapter. It is customary for corporations taking appeals, to pay into the State Treasury the amount they admit to be due, in order to save the twelve per cent. interest thereon from the time of taking appeal to the rendering of judgment.

Public and quasi-public corporations are exempt from all *local* taxation upon such property as is essential to the exercise of their chartered privileges, but are taxable locally on such real estate and other taxable property as is *not* necessary to the exercise of their respective franchises. Such companies are railroad, canal, and telegraph companies, etc. Lehigh Coal & Nav. Co. *v.* Northampton Co., 8 W. & S., 334; R. R. *v.* Berks Co., 6 Pa., 70; Lack. Coal & Iron Co. *v.* Luzerne Co., 42 Pa., 424; Pa. R. R. Co.'s Appeal, 3 Pa. C. C., 162. So, also, are gas companies. Coatesville Gas Co. *v.* County of Chester, 97 Pa., 476. And, in some instances, water companies. County *v.* Water Co., 4 D. R., 723. As to what property is not essential to the exercise of the franchise see Railroad *v.* Berks Co., 6 Pa., 70, and Wayne Co. *v.* Del. & Hudson Canal Co., 15 Pa., 351.

Copies of reports made by corporations to the Auditor-General's Department are given only to parties in interest, such as stockholders or officers of the company making the report of which a copy is required, or their counsel, or in cases where the copy is required for use in litigation already pending, and in the last named cases subpœnas for the production of the reports must be obtained and served upon the Auditor-General. Such reports are considered as *quasi*-confidential communications, made for purposes of taxation only, and are not open to public inspection. Persons applying to the Department for copies thereof or information therefrom should state, in their application, the purpose for which they are required and the capacity in which the writer makes application therefor. Neither copies nor information from the reports will be given under any circumstances until this information is given, in order that the Department may first determine whether or not the application comes within the above rule.

Foreign Corporations Becoming Domestic. The Act of June 9, 1881 (P. L., p. 89), provides as follows:

"That corporations created by or under the laws of any other State, doing business in this State, and in which three or more of the stockholders are citizens of this State, and which are embraced within corporations of the second class defined in Section 2 of an Act approved April 29, 1874, entitled 'An act to provide for the incorporation and regulation of certain corporations,' may become corporations of this State under the provisions of said last-mentioned act, by preparing, having approved and recorded a certificate, in which shall be stated: 1. Name of corporation. 2. Its purposes. 3. Place or places where its business is to be transacted. 4. The term for which it is to exist. 5. The names and residences of the stockholders and the number of shares held by each. 6. The number of its directors and the names and residences of those elected for the current year. 7. The amount of its capital stock, and the number and par value of the shares into which it is divided. 8. The legislation under which it was originally created. 9. Its financial condition at the date of the certificate, showing capital stock paid in, funded debt, floating debt, estimated value of property and cash assets, if any. Said certificate shall be accompanied by a certificate, under the seal of the corporation, showing the consent of a majority in interest of such corporation to such application for a charter, and to a renunciation of its original charter and of all privileges not enjoyed by corporations of its class under the laws of this Commonwealth."

Section 2 provides that the certificate shall be acknowledged and sworn to by at least three of the directors of the corporation before the recorder of deeds of the county where its business is to be principally carried on. The certificate is then produced to the Governor, who examines the same, and, if in proper form and within the purposes named for corporations of the second class, he shall order letters patent to issue. The certificate is to be recorded by the Secretary of the Commonwealth, who is required to furnish the Auditor-General with an abstract thereof. The original certificate is then recorded with the recorder of deeds of the county where the business of the company is to be principally carried on.

Section 3 provides that from the date of said letters patent the corporation shall have all the privileges possessed by companies of its class originally incorporated in Pennsylvania.

There is no special provision for the payment of bonus by foreign corporations becoming domestic, but as the first section of the Act above quoted provides that the corporations referred to therein "may become corporations of this State, *under the provisions of said last-mentioned Act*"—Act April 29, 1874—and as said Act of 1874 provides for the payment of bonus by all companies of the second class formed under it, bonus is evidently payable by such foreign corporations becoming domestic.

Office Licenses of Foreign Corporations (Obsolete). Section 16 of the Act of June 9, 1879 (P. L., p. 120), provided that

all foreign corporations, except foreign insurance companies, not having invested in this Commonwealth, or using therein, any part of their capital stock, which maintained offices in Pennsylvania for the use of their agents, officers, stockholders, etc., should be required to obtain from the Auditor-General a license therefor, and pay therefor one-fourth of a mill on each dollar of capital stock which such companies were, respectively, authorized to have.

This provision was wholly repealed by Act of April 24, 1885 (P. L., p. 9). For a decision construing this law see Norfolk & Western R. R. Co. *v.* Com., U. S. S. C., 26 W. N. C., 189.

Foreign Corporations to Register in Office of the Secretary of the Commonwealth. Foreign corporations doing business in Pennsylvania are required to register in the office of the Secretary of the Commonwealth, and pay a fee of $10.75 for so doing, under the provisions of the Act of April 22, 1874 (P. L., p. 108).

"That from and after the passage of this act no foreign corporation shall do any business in this Commonwealth until said corporation shall have established an office or offices and appointed an agent or agents for the transaction of its business therein.

"Section 2. It shall not be lawful for any such corporation to do any business in this Commonwealth until it shall have filed, in the office of the Secretary of the Commonwealth, a statement, under the seal of said corporation, and signed by the President or Secretary thereof, showing the title and objects of said corporation, the location of its office or offices, and the name or names of its authorized agent or agents therein; and the certificate of the Secretary of the Commonwealth, under the seal of the Commonwealth, of the filing of such statement, shall be preserved for public inspection by each of said agents, in each and every of said offices.

"Section 3. Any person or persons, agent, officer, or employé of any such foreign corporation who shall transact any business within this Commonwealth for any such foreign corporation, without the provisions of this act being complied with, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not exceeding thirty days, and by fine not exceeding one thousand dollars, or either, at the discretion of the court trying the same."

This act carries into effect Section 5 of Article 16 of the State Constitution. See Buckalew on the Constitution, 251. The fact that a corporation does business or sells its goods in this State through travelling solicitors, instead of at a particular place or by agents having known places of business, does not relieve it from the provisions of the Act of 1874. See Attorney-General's Report, 1893–94, p. 71.

A company not incorporated by this State is a "foreign corporation," within the meaning of the Act of June 7, 1879. Pembina Mining Co. *v.* Commonwealth, 13 W. N. C., 521; but a corporation chartered by the United States is not. Com. *v.* T. & P. R'y Co., 10 W. N. C., 405.

PART I.

CHAPTER II.

CLASSIFICATION OF STATE TAXES.

THE sources of revenue of the Commonwealth of Pennsylvania may be divided into two classes, according to the methods by which the revenues are collected, viz.:

1. Taxes paid directly, or through other State officers, to the State Treasurer.
2. Taxes collected by county officers and by them paid to the State Treasurer.

CLASS I.

Taxes Paid Directly to the State Treasurer.

These are as follows:

1. Bonus on charters.
2. Tax on capital stock of corporations, or interests in limited partnership and joint-stock associations.
3. Tax on corporate, county, and municipal loans.
4. Tax on the gross receipts of transportation, transmission, and electric-light companies.
5. Tax on the stock of banks.
6. Tax on the gross premiums of domestic insurance companies having capital stock, and on the premiums of foreign insurance companies.
7. Tax on the net earnings, or income, of brokers, private bankers, and unincorporated banks and savings institutions.
8. Tax on the matured stock of building and loan associations.
9. Excise tax on receipts of express companies.
10. Escheats.
11. Miscellaneous.

NOTE.—Properly speaking, bonus and escheats are not taxes, but for the purposes of this classification they are considered as such.

Bonus on Charters.

From and after the fifteenth day of June, 1897, all corporations (except bridge, cemetery, turnpike, canal, and railroad companies,

and building and loan associations) incorporated for profit under the provisions of the Act of April 29, 1874, or any supplement thereof, are required to pay, upon their incorporation, as the price of the privileges conferred upon them by their charters, a bonus of one-third of one per cent. of the amount of capital stock which they are authorized by their charters to have. Such bonus must be paid before their charters issue. A like bonus is also payable on the authorized amount of all subsequent increases of stock, payable immediately after the authorization of such increases. The Secretary of the Commonwealth will file no paper relating to such increase unless the bonus thereon has first been paid.

All corporations *created under other general laws* are required, before their charters issue, to pay a bonus of one-eighth of one per cent. on the authorized amount of their capital stock, and a like sum of one-eighth of one per cent. on such authorized capital stock, at the expiration of one year from the date of their charters. A like bonus is payable on the authorized amount of all subsequent increases of capital stock, payable one-eighth of one per cent. when the increase is authorized and one-eighth of one per cent. at the expiration of one year from that date.

Corporations already in existence are required to pay bonus on any increases of their capital stock, as follows:

1. If incorporated under the provisions of a special act, at the same rate and in the manner prescribed by said act, unless such corporations may have accepted the provisions of the Act of 1874, in which case it is an unsettled question whether they are subject to the bonus prescribed in the special act under which they are formed, or to the rate prescribed by the Act of April 29, 1874,* which is one-eighth of one per cent. on the authorized amount of the increase, when such increase is authorized, and one-eighth of one per cent. on the same amount at the expiration of one year from the date of authorization.

2. If incorporated under the Act of April 29, 1874, or any supplement thereto, the bonus is payable at the rate of one-third of one per cent. on the authorized amount of increase, the entire amount of such bonus to be paid as soon as the authority is granted.

3. If not incorporated under the Act of 1874, nor any supplement thereof, nor under any special act, bonus is payable on the

* It is true that Section 44 of the Act of April 29, 1874, provides that corporations accepting the provisions of said act, as well as those incorporated thereunder, shall pay bonus at the rate of one-fourth of one per cent., but it is curious to note that, only eleven days before the approval of said act, another law was approved, Act of April 18, 1874, which partially re-enacted the Bonus Act of 1868, and which expressly provided "That nothing in this act shall be construed to reduce the amount of bonus to be paid by any company having in its charter a special provision requiring the payment of bonus at a higher rate . . . ." It may be that the Legislature intended, as an inducement to accept the Act of April 29, 1874, to permit corporations accepting the same, which were organized under special acts requiring the payment of bonus at higher rates than one-fourth of one per cent., to pay at the rate provided in said Act of April 29, 1874, although companies not accepting the act were to pay at the rates specified in the acts authorizing their incorporation, as provided in the Act of April 18, 1874. If so, it was a voluntary release by the State of what it had a perfect right to collect, and the provision should, therefore, be strictly construed. What the result of such a strict construction might be can only be conjectured.

authorized amount of the increase at the rate of one-fourth of one per cent., one-half to be paid immediately after the authorization and the other half at the expiration of one year from said date.

History. Prior to the adoption of the Constitution of 1873 corporations were formed under special acts and a few general acts providing for the incorporation of manufacturing and similar corporations. These special acts generally stipulated that a certain amount of bonus should be paid on the incorporation of a company; usually at the rate of one-half of one per cent. on the actual amount of capital, payable in four annual instalments.* The Act of April 7, 1849, authorizing the incorporation of certain manufacturing companies, provided for a bonus of one per cent., payable in five annual instalments. A supplement to this Act, approved April 20, 1853, reduced this bonus to one-half of one per cent., also payable in five annual instalments.

The Act of May 1, 1868 (P. L., p. 113), was, however, the first to provide for the payment of bonus by almost all classes of corporations. The 15th Section of that Act provided that "hereafter every company, incorporated by or under any general or special law of this Commonwealth, except railroad, canal, turnpike, bridge, or cemetery companies, and companies incorporated for literary, charitable, or religious uses, shall pay to the State Treasurer, for the use of the Commonwealth, a bonus of one-quarter of one per cent. on the amount of capital stock which said company is authorized to have, in two equal instalments, and a like bonus on any subsequent increase thereof."

The General Incorporation Act of April 29, 1874, Sec. 44 (P. L., p. 107), contained a similar provision applicable to all corporations organized for profit, with the exceptions mentioned in the Act of 1868, under its provisions. The Act of May 22, 1878 (P. L., p. 97) amended the bonus provision in the Act of 1874 by inserting a clause that "When any corporation shall have reduced its capital stock in accordance with the provisions of the twenty-third section of this act, such corporation shall not be liable in the aggregate to a greater bonus than one-fourth of one per cent. upon the capital stock as altered and reduced."

The Act of May 7, 1889 (P. L., 115), required that bonus

* The practice of requiring corporations formed under special acts to pay bonus, under the provisions of such special acts, seems to have begun about the year 1849, and to have been originally confined to coal and mining companies. The Act of 1849 (P. L., p. 149), incorporating the Wilkes-Barre Coal Company, is the first special act that the writer can find providing for the payment of the bonus, though it is possible that there may be a few acts of still earlier date. The bonus required to be paid by these special acts was generally, at first, one per cent. on the amount of the authorized capital, payable in five annual instalments. Later, special acts reduced the bonus to one-half of one per cent., payable in four annual instalments. The General Act of 1868, as we have seen, reduced it to one-fourth of one per cent., payable in two instalments, the first to be paid when the charter issued, and the second at the expiration of one year from that date.

The most striking instance of the payment of a bonus (though the charge was not denominated such) occurred in the case of the incorporation of the U. S. Bank as a State corporation, after the expiration of its charter from the National Government. By the Act of February 18, 1836 (P. L., p. 36), this corporation was required to pay two million dollars "in consideration of the privileges granted by this act, and in lieu of all taxes on dividends." It does not appear how much was considered, in arriving at this sum, to be paid for the privileges granted, and how much in commutation of the tax on dividends.

should be paid on the *authorized* amount of all increases of capital stock, instead of upon the actual amount of such increases, as had theretofore been the practice, under the decisions of the courts.

The Act of June 15, 1897 (P. L., p. 155), provides that from that date "all corporations formed under the provisions of the Act of April 29, 1874, *or any of its supplements*, shall pay a bonus of one-third of one per cent. on the authorized amount of their capital stock, the full amount thereof to be paid before their charters issue, and a like bonus on the authorized amount of all subsequent increases of capital stock, to be paid in full immediately after the authority for the increase has been given."

Bonus is defined by the courts to be the price paid the Commonwealth by a corporation for the privileges conferred on such corporation by its charter. Com. *v.* Coal Co., 13 W. N. C., 324. It is defined by Bouvier as "A premium paid to a grantor or founder, as . . . a bank paid a bonus to the State for its charter; a consideration for what is received." It is, therefore, in no sense a tax, and the payment thereof does not relieve any corporation from any tax to which it is otherwise subject.

The recent Act of June 15, 1897 (P. L., p. 155), very much simplifies the subject of bonus so far as its relations to the corporations covered by the provisions of the said act are concerned. The following relates mainly, if not wholly, to those classes of corporations which are *not* covered by the provisions of the Act of June, 1897, and which, therefore, continue to pay bonus in two instalments, instead of one, under the Acts of 1868, April 18, 1874, and May 7, 1889.

Although one year's time is given within which to pay the second instalment of bonus on capital stock, yet the second instalment becomes a debt as soon as the charter issues, and does not, therefore, accrue during the year which elapses before it is payable. This necessarily arises from the nature of the charge, as above defined. Hence, if a company dissolve before the expiration of one year from the date of its charter, the second instalment of bonus becomes at once due and payable. The same is true as to bonus on increases of capital.

It will be noted, from what has preceded, that bonus is payable on the *authorized* amount of all increases of stock, and not upon the *actual* amount of such increases. It therefore follows that it is immaterial whether any stock is actually issued under any authority granted, or not, bonus being due, in any case, on the full amount of the increase authorized.

In order for a corporation to take advantage of the provisions of the Act of May 22, 1878, above quoted, it must make its reduction of capital stock within a reasonable time before the last instalment of bonus becomes due, and under such circumstances as will indicate that the reduction is not made solely to avoid the payment

of bonus; otherwise bonus will be exacted without regard to the reduction. Com. *v.* Amer. Kaolin Co., 2 Pears., 364.

A very natural question is, What classes of corporations are *not* included under the provisions of the Act of June 15, 1897, by not being incorporated under the provisions of the Act of April 29, 1874, nor any of its supplements? In other words, what corporations will continue to pay bonus at the rate of one-fourth of 1 per cent., payable in two equal annual instalments? These classes will be as follows: banks, savings institutions of all kinds, co-operative associations formed under the provisions of the Act of June 7, 1887 (P. L., p. 365), insurauce companies having capital stock, and possibly one or two other classes of corporations which do not now suggest themselves to the writer.

Limited partnership associations and joint-stock associations are incorporated, or organized, by the different courts of common pleas, and are not subject to the payment of bonus. Neither are any of the classes enumerated in the Act of April 29, 1874, under Class I. of that Act—*not incorporated for profit.*

Following are various decisions of the courts upon the subject of bonus, and these are succeeded by the acts heretofore mentioned, in order that the reader may be able to consult the full text thereof.

Opinions and Decisions.

Banks incorporated under letters patent, under the provisions of the Act of April 26, 1889 (P. L., p. 61), are subject to the payment of bonus on the amount of authorized capital with which they are incorporated, but banks whose charters are extended by a certificate of the Secretary of the Commonwealth, under the provisions of the Act of May 10, 1889 (P. L., 185), are not required to pay bonus on such extension. Warren Savings Bank *v.* Com., Dauphin C. P., No. 376, June T., 1893.

Corporations whose charters are about to expire by their own limitation, desiring to be rechartered, must pay bonus. Op. Attorney-General Palmer, March 4, 1879.

A company having paid a bonus when originally incorporated is not required to pay an additional bonus before it can accept the provisions of the Act of 1874. Op. Attorney-General Dimmick, Nov. 9, 1874.

Lien of Commonwealth for bonus is discharged by judicial sale. Op. Dep. Attorney-General Snodgrass, Jan. 26, 1883.

Hence companies organized after purchase at judicial sale of the franchises of other companies are not required to pay any balances of bonus due by said companies. *Ib.*

Payment of bonus is in no sense an implied contract not to tax a company further. And where a bonus is exacted upon a renewal of charter by way of exemption from taxation during its renewal,

it does not relieve from the payment of taxes already accrued. Com. *v.* Girard Bank, 2 Pears., 323.

Where companies merge and increase their capital, the increase is subject to bonus, but where one of the companies merged pays the bonus which governs at the time, and that act has subsequently been repealed, bonus on that part of the capital stock cannot be collected. Com. *v.* Alliance Coal Co., 13 W. N. C., 324.

A corporation chartered in 1865 by a special act of the Legislature, which conferred the unconditional privilege of "increasing its capital stock from time to time," cannot be required, upon an increase of its capital stock, to pay the bonus which, by the Act of 1874, is required to be paid by corporations upon an increase of stock under that act. To require such payment would be to impair the obligations of a contract contained within the charter. Com. *v.* Western Trans. Co., 107 Pa., 112.

Foreign corporations becoming domestic companies under the provisions of the Act of June 9, 1881 (P. L., p. 89), are required to pay bonus. The first section of said act provides that foreign companies "may become corporations of this State *under the provisions of said last-named act*," viz.: the Act of April 29, 1874, and, as said act provides for the payment of bonus by all corporations incorporated for profit, except those hereinbefore enumerated, under its provisions, bonus is evidently payable by such foreign corporations becoming domestic companies.

Where a company is incorporated with the privilege of performing the operations peculiar to different classes of companies, some of which companies are by law exempt from the payment of bonus, the question whether or not such a company is subject to the payment of bonus will depend upon the principal business actually transacted by such corporation. If the business in which it is principally engaged is of the nature of the business transacted by companies which are not exempted from the payment of bonus, such company will be required to pay bonus, even though it may also be engaged in business similar to that transacted by companies which are by law exempted from the payment of bonus. International Navigation Company *v.* Com., 104 Pa., 38.

The repeal of a statute imposing a bonus upon corporations organized thereunder releases such corporations from liability for accrued but unpaid bonus.

A corporation organized by the merger of two other corporations, under the provisions of the sixth section of the Act of April 17, 1876, and which, upon such merger, increases the combined capital stock, is liable to pay to the Commonwealth a bonus of one-quarter of one per cent., imposed by the Act of April 29, 1874.

The bonus imposed upon corporations by the Act of April 29, 1874, is not a tax, but the price paid for the charter privileges, and a bonus remaining unpaid, after the time specified in the act,

is a debt, which bears interest until paid at the rate of six per cent. Commonwealth *v.* Alliance Coal Mining Company, 13 W. N. C., p. 324; 16 Phila., 575.

Text of the Different Laws Relating to Bonus.

(Act of May 1, 1868; P. L., p. 113.)

"Section 15. That hereafter every company incorporated by or under any general or special law of this Commonwealth, except railroad, canal, turnpike, bridge, or cemetery companies, and companies incorporated for literary, charitable, or religious purposes, shall pay to the State Treasurer, for the use of the Commonwealth, a bonus of one-quarter of one per centum upon the amount of capital stock which said company is authorized to have, in two equal instalments, and a like bonus upon any subsequent increase thereof. The first instalment shall be due and payable upon the incorporation of said company, or upon the increase of the capital thereof, and the second instalment one year thereafter; and no company, as aforesaid, shall have or exercise any corporate powers until the first instalment of said bonus is paid; and the Governor shall not issue letters patent to any company until he is satisfied the first instalment of said bonus has been paid to the State Treasurer; and no company incorporated by a special act of assembly shall go into operation, or exercise any corporate powers or privileges, nor shall said act be enrolled among the laws of the State, until said first instalment of bonus has been paid as aforesaid."

(Act of April 18, 1874; P. L., p. 62.)

"Section 7. That every company, except railroad, canal, turnpike, bridge, or cemetery companies, and companies incorporated for literary, charitable, or religious purposes, which shall increase its capital stock under the provisions of this act shall pay to the State Treasurer, for the use of the Commonwealth, a bonus of one-quarter of one per centum upon the amount of said increase, in two instalments, the first to be due upon the filing of the certificate required by the preceding section of this act, to be filed in the office of the Secretary of the Commonwealth, and the second instalment one year thereafter; Provided, that nothing in this act shall be construed to reduce the amount of bonus to be paid by any company having in its charter a special provision requiring the payment of bonus at a higher rate than one-quarter of one per centum."

(Act of April 29, 1874; P. L., p. 107.)

"Section 44. Every company incorporated by or under the provisions of this act, or accepting the same, except turnpike, bridge, cemetery companies, or building and loan associations, and excepting all of those corporations named in the first class of Sec-

tion 2 of this Act, shall pay to the State Treasurer, for the use of the Commonwealth, a bonus of one-quarter of one per centum upon the amount of the capital stock which said company is authorized to have, in two equal instalments, and a like bonus upon any subsequent increase thereof. The first instalment shall be due and payable upon the incorporation of said company, or upon the increase of the capital thereof, and the second instalment one year thereafter; and no company as aforesaid shall have or exercise any corporate powers until the first instalment of said bonus is paid, and the Governor shall not issue letters patent to any company until he is satisfied that the first instalment of said bonus has been paid to the State Treasurer; and no company incorporated as aforesaid shall go into operation or exercise any corporate powers or privileges until said first instalment of bonus has been paid, as aforesaid."

(Act of May 22, 1878; P. L., p. 97.)

(This re-enacts the forty-fourth section of the Act of April 29, 1874, above given, and adds thereto the following:)

"Provided, that when any corporation shall have reduced its capital stock in accordance with the provisions of the twenty-third section of this act, such corporation shall not be liable in the aggregate for a greater bonus than one-fourth of one per cent. upon the capital stock as altered and reduced."

(Act of May 7, 1889; P. L., p. 115.)

"Section 1. That, from and after the passage of this act, any corporation heretofore or hereafter incorporated by or under any general or special law of this Commonwealth, except railroad, canal, turnpike, bridge, or cemetery companies, building and loan associations, agricultural societies, and companies or associations incorporated for literary, charitable, or religious purposes, upon increasing their capital stock, in pursuance of any general or special law, shall pay to the State Treasurer, for the use of the Commonwealth, a bonus of one-fourth of one per centum upon the *amount of the authorized increase*, in two equal annual instalments; the first shall be due and payable upon the date of the authority to increase as aforesaid, and the second within one year thereafter. All laws or parts of laws inconsistent herewith are hereby repealed."

(Act of June 15, 1897; P. L., p. 156.)

(This Act amends the forty-fourth section of the Act of April 29, 1874, heretofore given, by substituting the following therefor:)

"Every company incorporated by or under the provisions of this act [the Act of 1874] or accepting the same, except turnpike, bridge, cemetery companies, or building and loan associations, and excepting all those corporations named in the first class

of Section 2 of this Act, shall pay to the State Treasurer, for the use of the Commonwealth, a bonus of *one-third* of one per centum upon the amount of capital stock which said company is *authorized to have*, and a like bonus upon any subsequent *authorized increase* thereof. And no company, as aforesaid, shall have or exercise any corporate powers until the said bonus is paid, and the Governor shall not issue letters patent to any company until he is satisfied that the said bonus has been paid to the State Treasurer. And no company incorporated as aforesaid shall go into operation or exercise any corporate powers or privileges until said bonus has been paid. The Secretary of the Commonwealth shall not permit the filing in his office of any proceedings for increase of capital stock until he is satisfied that the said bonus upon said increase has been paid to the State Treasurer."

The following acts relate to special classes of corporations:

By the Act of March 22, 1887, Section 10 (P. L., p. 8), *traction and motor companies* pay the same bonus as provided by the Act of April 29, 1874, and companies reorganized under said Act of 1887 are credited with the amounts of bonus which may have been previously paid by them.

Under the provisions of the Act of May 29, 1885, Section 15 (P. L., p. 29), *natural gas companies* organized under said act pay bonus as provided in the Act of 1874, and, on reorganizing under the Act of 1885, companies are credited with the bonus which they may previously have paid.

The Act of June 25, 1895 (P. L., p. 312), which provides for the extension of the charters of *manufacturing companies* incorporated under the Act of April 29, 1874, the charters of which were limited in operation to a period of twenty-five years, also provides that such companies, so renewing their charters, shall first pay "the fee and bonus on their capital stock now fixed by law for the renewal or extension of a corporate charter."

Where an act provides that the bonus to be paid by the corporations formed under it shall be at the same rate provided by the Act of April 29, 1874, the rate will be one-third of one per cent., under the provisions of the Act of 1897.

CHAPTER III.

TAX UPON CAPITAL STOCK.

THE following classes of corporations are subject to the tax on capital stock:

1. Every corporation having capital stock, every joint-stock association, and limited partnership whatsoever, organized or incorporated by or under any law of this Commonwealth, or which may hereafter be so organized or incorporated.

2. Every corporation, joint-stock association, and limited partnership whatsoever, now or hereafter incorporated or organized by or under the laws

(*a*) Of any other State or Territory of the United States,
(*b*) By the United States, or
(*c*) By any foreign government

And doing business and liable to taxation within this Commonwealth, or having capital or property employed or used in this Commonwealth, by or in the name of any limited partnership, joint-stock association, company, or corporation whatsoever, association or associations, copartnership or copartnerships, person or persons, or in any other manner.

3. *Except* in the case of (*a*) banks, (*b*) savings institutions, and (*c*) foreign insurance companies.

The tax is imposed annually, at the rate of five mills upon each dollar of the actual value of the whole capital stock of all kinds, including common, special, and preferred.

The tax is settled by the Accounting Officers upon the basis of a report required to be made by all companies subject to the tax, and, particularly, upon an appraisement of the value of the stock contained in such report, made, under oath, by two officers of the company making the report.

In this appraisement the said officers are required, between the first and fifteenth days of November in each year, to estimate and appraise the capital stock of their corporation at its actual value in cash, not less, however, than the average price for which said stock sold during the year, and not less than the price or value indicated or measured by net earnings, or by the amount of profit made and either declared in dividends, or carried into surplus or sinking fund.

History. This, one of the most important of all State taxes, was first imposed by the Act of June 11, 1840, and has been in force, with various modifications, since that time. In the following tables will be found analyses of the different acts relating to the tax upon capital stock, showing the development of this tax from its inception to the present time:

Analysis of the Various Acts Imposing a Tax upon the Capital Stock of Corporations.

Date of Act.	Kinds of corporations taxed.	Reports required.	Rate of tax.	Miscellaneous provisions.
1840, June 11 (P. L., p. 612).	All banks and companies whatsoever, incorporated by or in pursuance of any law of this Commonwealth, on which a dividend or profit of one per cent. (or more) per annum is made or declared.	None; tax to be deducted from dividends, and paid to the State Treasurer.	One-half mill on every dollar of the dividends made or declared.	
1843, March 21 (P. L., p. 121).	Joint-stock associations.	(As in Act of 1840.)	(As in Act of 1840.)	
1844, April 29 (P. L., p. 486).	All banks, institutions and companies, incorporated by or under any law of this Commonwealth.	Report to be made only when dividends are less than 6 per cent., and then to be made by the cashier or treasurer and a majority of the directors, under oath, between November 1st and 15th, appraising stock at its actual value in cash.	If the dividends shall equal or exceed 6 per cent., the tax to be at the rate of one-half mill for each 1 per cent; if dividends are less than 6 per cent., then tax at three mills on appraised value of the stock.	If the dividends equal or exceed 6 per cent., the tax to be collected as provided by the Act of 1840; otherwise to be transmitted by the treasurer or cashier to State Treasury before January 15th, next.
1858, April 21 (P. L., p. 419).	All institutions and companies incorporated by or under any law of this Commonwealth, which are taxable under the laws of this Commonwealth.	President or treasurer to report, under oath, in November, the amount of capital paid in, date, amount and rate of all dividends, and if the dividends do not equal or exceed 6 per cent., then to appraise the stock, as required by Act of 1844.	(Tax as in Act of 1844.)	Penalty: If a company shall fail to make report and appraisement before December 31st, accounting officers to add 10 per cent. to tax, and if the company neglect so to do for three consecutive years, Auditor-General shall report to Governor, who shall proclaim charter forfeited.
1859, April 12 (P. L., p. 529).	All banks, savings institutions and companies whatsoever, incorporated by or under any law of this Commonwealth, or that may be hereafter incorporated.	Report as provided by previous acts.	At rate of one-half mill for each 1 per cent. of dividend, and in case no dividend shall be paid, then at three mills on appraised value of stock.	Building associations and plank-road and turnpike companies are not subject to any tax unless they make or declare a dividend.

1868, May 1 (P. L., p. 108).	Every company incorporated by or under any law of this Commonwealth, except banks and savings institutions, and all companies incorporated by any other State and lawfully doing business in this Commonwealth, which are taxable under the laws of this State.	President or treasurer to report in November, stating amount capital paid in, amount, rate and date of dividends; if no dividend is declared, then the treasurer and secretary shall appraise stock between November 1st and 15th, at its actual value in cash.	One-half mill for each one per cent. of dividend, or three mills on appraised value of stock, where no dividends are paid.	Penalty: As provided in Act of 1858, save that if company neglect to report for three consecutive years, Auditor-General *may*, "if he deem it conducive to the public interest," report such failure to Governor, who shall thereupon declare charter forfeited.
1874, April 24 (P. L., p. 68).	Every company now or hereafter incorporated by or under any law of this Commonwealth, except banks and savings institutions, and every company now incorporated or hereafter incorporated by any other State, and doing business in this Commonwealth, which is taxable under the laws of this State.	President or treasurer to report in November amount capital paid in, amount, date, and rate of dividends; where no dividends declared, treasurer and secretary to appraise stock between November 1st and 15th, at its actual value, "not less than the average price for which said stock sold during year."	Transportation companies at nine-tenths of one mill for each 1 per cent. of dividend declared, or, if no dividends are declared, then at six mills on appraised value. Other companies, one-half mill for each one per cent. of dividend, or three mills on appraised value.	For failure to report on or before December 31st, penalty of 10 per cent. as in former acts. If the officers of the company shall *intentionally* fail for three consecutive years to make reports, the Auditor-General to report to Governor, "who, if satisfied that such failure is intentional," shall declare the charter forfeited, by proclamation. Accounting officers may raise appraisement, if dissatisfied therewith, and settle tax on such increased appraisement.
1877, March 20 (P. L., p. 6).	All companies now or hereafter incorporated by or under any law of this Commonwealth, or now or hereafter incorporated by any other State, and doing business in this State, which are taxable under the laws of the State, except building associations, banks and savings institutions and foreign insurance companies.	President or treasurer to report in November capital paid in, date, amount and rate of dividends, "and where such company shall fail to delare any dividend or the dividends shall amount to less than 6 per cent. upon the par value of common or preferred stock, treasurer and secretary to appraise stock between November 1st and 15th, at actual value in cash, not less than the average price for which said stock sold during year."	If dividends equal or exceed 6 per cent., then at one-half mill for each 1 per cent. of dividend, otherwise at three mills on appraised value. "In case any such company shall have more than one kind of stock, as common or preferred, upon one of which stocks a dividend of 6 or more per cent. shall have been declared, and none upon the other, then tax shall be at rate of one-half mill for each 1 per cent. of dividend on stock on which dividends of 6 per cent. or more shall have been declared, and three mills on appraised value of stock on which less than 6 per cent. dividends were declared."	(Same as in Act of 1874.)

Date of Act.	Kinds of corporations taxed.	Reports required.	Rate of tax.	Miscellaneous provisions.
1879, June 7 (P. L., p. 112).	Every company now or hereafter incorporated by or under any law of this Commonwealth, and every other company incorporated by any other State or territory of the United States or foreign government, and doing business in this Commonwealth, and having capital employed therein in the name of any other company or corporation, association, person or persons, or in any other manner, EXCEPT banks, savings institutions, and foreign insurance companies. Sections 5 and 6 extend the provisions of the act to limited partnerships.	President or treasurer to report in November total authorized capital stock, whole number of shares authorized, number of shares issued, par value each share, amount paid in on each share, amount capital paid in, date, rate, and amount of each dividend. Where dividends less than 6 per cent., secretary and treasurer to appraise between November 1st and 15th, at "its actual value in cash, not less than the average price for which said stock sold, and not less than price or value as indicated or measured by amount dividends made and declared."	Tax as in Act of 1877, "provided that whenever such company shall make any profit and add same to its sinking fund, without a division amongst its stockholders, such profit shall be included in report, and for purposes of this act considered as having been divided amongst stockholders, and shall subject stock to a taxation as a dividend."	(Same as In Act of 1874.) Limited partnerships organized for manufacturing or mercantile purposes exempt from tax.
1885, June 30 (P. L., p. 93).	.....	.....	.....	Exemption: Section 20 provides "That the tax laid upon manufacturing corporations by and under the revenue laws of this Commonwealth be and the same are hereby abolished as to such corporations, and the laws under which said taxes are laid and collected he and the same are hereby repealed, so far, and so far only, as they apply to manufacturing corporations; Provided, that the provisions of this act shall not apply to corporations engaged in the manufacture of malt, spirituous, and vinous liquors, or in the manufacture of gas."

1889, June 1 (P. L., p. 420).	Every corporation, joint-stock association, and limited partnership whatsoever now or hereafter organized or incorporated by or under any law of this Commonwealth, and every corporation, joint-stock association, and limited partnership whatsoever now or hereafter incorporated or organized by or under the laws of any other State or territory of the United States, or by the United States or by any foreign government, and doing business and liable to taxation within this Commonwealth, or having capital or property employed or used in this Commonwealth by or in the name of any limited partnership, joint-stock association, company, or corporation whatsoever, association or associations, copartnership or copartnerships, person or persons, or in any other manner.	President, chairman, or treasurer to report in November, viz.: Authorized capital stock; authorized number of shares. Number shares issued. Par value each share. Amount paid in on each share. Amount capital paid in. Amount capital on which dividends paid. Date of each dividend. Rate per cent. each dividend. Amount each dividend. Gross earnings, net earnings. Surplus profit added to sinking fund. Highest price stock between November 1st and 15th. Highest price stock during year. Average price of stock during year. Where dividends less than 6 per cent. two officers to appraise between November 1st and 15th, stock "at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and not less than the price or value as indicated or measured by amount dividends made or declared."	Tax as in Act of 1879. The provision of the Act of 1879 relative to moneys carried to sinking fund amended as follows: "Provided that said moneys or any part thereof be expressly set apart for the payment of debts." Tax to be paid within sixty days from date of settlement.	Exemption: The exemption provided for by Act of 1885 is limited to corporations and limited to partnerships "organized *exclusively* for manufacturing purposes and actually carrying on manufacturing within the State." Gas companies are omitted from the list of those not entitled to the exemptions, and corporations enjoying and exercising the right of eminent domain are added to such list. Penalty: A failure on the part of officers of a company to make reports for three successive years is made a misdemeanor, punishable by a fine of $500 and imprisonment not exceeding one year, or both or either, in the discretion of the court.

From the foregoing we see that the original Act of 1840 imposed a tax upon dividends only, and not upon the capital stock itself on which such dividends were declared; but the Act of 1844 changed the tax from one on dividends to a tax on capital stock; and the tax has remained the same, in this respect, to the present time. Under the provisions of the Act of 1844 tax was assessed upon capital stock on the dividend basis, only in case the dividends declared equalled or exceeded six per centum; where the dividends were less than six per centum per annum the tax was then settled on the appraised value.

The distinction between a tax on dividends and a tax on capital stock on a dividend basis is, it is hoped, understood. A tax on dividends is a tax laid on the earnings or dividends of a stock; there is no tax unless a dividend is declared. A tax on capital stock, on a dividend basis, is a tax imposed upon stock, and not on the dividends; but the rate of tax on the capital stock is determined by the amount of dividends paid on such stock; thus, if a given stock pay six per cent. in dividends, the rate of taxation upon the capital stock will be a certain amount; if the stock pay eight per cent., the rate of taxation upon the stock will be another amount. A clear comprehension of this is requisite to the proper understanding of what follows.

The Act of 1859 extended the dividend basis of taxation to all cases where any dividend whatever was declared; the tax being assessed on an appraised value only in cases where no dividends whatever had been declared. This practice was continued in succeeding acts until the passage of the Act of 1877, which again restricted the use of the dividend basis of taxation solely to cases where the dividends equalled or exceeded six per cent., and imposed the tax upon an appraised value only where the dividends did not amount to six per cent.; and that continued to be the practice until the passage of the Act of June 8, 1891, which did away with the dividend basis altogether.

The Act of 1874 imposed a heavier tax on transportation than upon other companies; but the Act of 1877 equalized the tax upon all corporations subject to it, again.

The Act of 1879 relieved limited partnership associations engaged in manufacturing or mercantile pursuits from tax under its provisions, and the Act of 1885 extended the exemption from tax upon capital stock to all manufacturing corporations, except those engaged in the manufacture of spirituous, malt, or vinous liquors and gas companies. The Acts of 1889 and 1891 limited such exemption to corporations organized *exclusively* for manufacturing purposes, and actually carrying on manufacturing within the State, extended the exemption to artificial gas companies, and excluded therefrom corporations enjoying and exercising the right of eminent domain —*i. e.*, the right of converting private property to their own use, after condemnation proceedings, and making compensation there-

for. The Act of June 8, 1893, does away with the requirement that companies shall be *exclusively* organized for manufacturing, and exempts so much of the capital stock of corporations, etc., organized for manufacturing, which is invested in and actually and exclusively employed in carrying on manufacturing within the State, with the same exceptions to the operation of the exemption as are contained in the Acts of 1889 and 1891, above stated.

The foregoing are the main differences between the several acts passed prior to the approval of the Acts of 1891 and 1893, the other and less important being readily ascertainable from an examiuation of the foregoing analysis.

Change in the Character of the Tax Effected by the Act of 1891. The Act of June 8, 1891, which is now in force, and which is given below at length, seems to materially change the character of the tax on capital stock as it was created and continued by the acts above referred to. What that change is may be best ascertained from the following excerpts from an opinion of Simonton, J., of the Dauphin Court of Common Pleas:

"We thus find that under all the acts taxing capital stock [prior to that of 1891] the amount of the tax was either fixed by the rate per cent. of the dividends—in which case that was the sole measure of the tax, regardless of the actual value of property and assets of the corporation—or it was imposed upon the appraised value of the stock, subject to the limitation, in the earlier acts, that the amount of the appraisement should be not less than the value indicated by the selling price of the stock . . . and, afterwards, by the limitation that it should not be less than the value indicated by the amount of dividends or profits made. The nature of the test of value was, in all cases, *an inquiry into the result of the activity of the corporation for the tax-year and the inference of value from these results, rather than a direct estimate of the value of the tangible property and assets of the corporations.* . . . The title of this act (1891) is 'An act to provide increased revenue for the purpose of relieving the burdens of local taxation . . . and providing for the greater uniformity of taxation by taxing all property of corporations, limited partnerships, and joint-stock associations having capital stock, at the rate of five mills on each dollar of its actual value.

"We think we find here a distinct declaration that the purpose of the act is to impose a tax upon the property of the corporations to which it applies." N. Y., P. & O. R. R. Co., 691 Com. Docket, Dau. C. P., 1896.

In other words, while, under former acts, the tax on capital stock was a tax on the property of a company, as represented by its capital stock, the value of such stock for the purposes of taxation was to be ascertained in an artificial manner, without much regard to what the actual value of the property, which that stock

represented, was. The Act of 1891 does away with such artificial methods, and in settling tax thereunder the true value of the property represented by the stock is the sole measure of appraisement and settlement.

Acts now in Force. The existing acts governing the taxation of capital stock are those of June 8, 1891 (P. L., p. 229), and June 8, 1893 (P. L., p. 353), which provide as follows:

Act of June 8, 1891,* Section 4, amending Section 20, Act of June 1, 1889:

"That hereafter, except in the case of banks, savings institutions, and foreign insurance companies, it shall be the duty of the president, chairman, or treasurer of every corporation having capital stock, every joint-stock association and limited partnership whatsoever, now or hereafter organized or incorporated by or under any law of this Commonwealth, and of every corporation, joint-stock association, and limited partnership whatsoever now or hereafter incorporated or organized by or under the laws of any other State or Territory of the United States, or by the United States, or by any foreign government, and doing business in and liable to taxation within this Commonwealth, or having capital or property employed or used in this Commonwealth, by or in the name of any limited partnership, joint-stock association, company, or corporation whatsoever, association or associations, copartnership or copartnerships, person or persons, or in any other manner, to make a report in writing to the Auditor-General in the month of November, one thousand eight hundred and ninety-two, and annually thereafter, stating specifically:

"*First.* Total authorized capital stock.

"*Second.* Total authorized number of shares.

"*Third.* Number of shares of stock issued.

"*Fourth.* Par value of each share.

* The Preamble to the Act of June 8, 1891, is of interest, as throwing light upon the object sought to be obtained by said act, and is, therefore, here given.

"Whereas, There is a widespread demand for the enactment of such measures as will bring about the equalization of taxation and the relief of local taxation upon real estate;

"And whereas, Moneyed capital, taxable under the first section of the act entitled 'A further supplement to an act, entitled "An act to provide revenue by taxation," approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine,' approved the first day of June, Anno Domini one thousand eight hundred and eighty-nine, does not bear its just proportion of the burdens of local taxation;

"And whereas, It is desirable largely to increase the State appropriation for the support of the public schools, out of an increased taxation upon the capital stock of certain corporations imposed by the twentieth and twenty-first sections of said act; And whereas, Experience has shown that the said twentieth and twenty-first sections result, in many cases, in requiring corporations which pay dividends less than six per centum to pay a larger amount of tax than corporations paying dividends of six per centum are required to pay;

"And whereas also, It has shown that the mode prescribed in the twenty-first section of said act for taxing corporations paying dividends of six per centum and upward at a rate of tax to be measured by the dividends results, in many cases, in corporations with large investments in bonds, mortgages, and moneys at interest, paying a less rate of tax than other corporations without capital stock and individual citizens are required to pay, under the first section of said act, upon the same kind of property;

"And whereas also, It appears that the taxes imposed upon corporations and individual citizens by the first and twenty-first sections of said act can be made much more nearly uniform by taxing all corporations, limited partnerships, and joint-stock associations having capital stock, at a fixed rate of five mills upon each dollar of the actual value of their whole capital stock, including as well their bonds, mortgages, and moneys at interest, as their franchises and property of other kinds."

"*Fifth.* Amount paid into the treasury on each share.

"*Sixth.* Amount of capital paid in.

"*Seventh.* Amount of capital on which dividend was declared.

"*Eighth.* Date of each dividend declared during said year ended with the first Monday of November.

"*Ninth.* Rate per centum of each dividend declared.

"*Tenth.* Amount of each dividend during the year ended with the first Monday in said month.

"*Eleventh.* Gross earnings during the year.

"*Twelfth.* Net earnings during said year.

"*Thirteenth.* Amount of surplus.

"*Fourteenth.* Amount of profit added to sinking fund during said year.

"*Fifteenth.* Highest price of sales of stock between the first and fifteenth days of November aforesaid.

"*Sixteenth.* Highest price of sales of stock during the year aforesaid.

"*Seventeenth.* Average price of sales of stock during the year; and in every case any two of the following-named officers of such corporation, limited partnership, or joint-stock association, namely: the president, chairman, secretary, and treasurer, after being duly sworn or affirmed to do and perform the same with fidelity and according to the best of their knowledge and belief, shall, between the first and fifteenth days of November of each year, estimate and appraise the capital stock of the said company at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and not less than the price or value indicated or measured by net earnings or by the amount of profit made and either declared in dividends or carried into surplus or sinking fund, and when the same shall have been so truly estimated and appraised they shall forthwith forward to the Auditor-General a certificate thereof, accompanied with a copy of their said oath or affirmation, signed by them and attested by a magistrate or other person duly qualified to administer the same; Provided, that if the Auditor-General and State Treasurer, or either of them, is not satisfied with the appraisement and valuation so made and returned, they are hereby authorized and empowered to make a valuation thereof based upon the facts contained in the report herein required, or upon any information within their possession or that shall come into their possession, and to settle an account on the valuation so made by them for the taxes, penalties, and interest due the Commonwealth thereon, with right to the company dissatisfied with any settlement so made against it to appeal therefrom in the manner now provided by law; and in the event of the neglect or refusal of the officers of any corporation, company, joint-stock association, or limited partnership, for a period of sixty days, to make the report and appraisement to the Auditor-General as herein provided, it shall be the duty of the Auditor-

General and State Treasurer to estimate a valuation of the capital stock of such defaulting corporation, company, joint-stock association, or limited partnership, and settle an account for taxes, penalty, and interest thereon, from which settlement there shall be no right of appeal."

Section 1, Act June 8, 1893, amending Section 5 of the Act of June 8, 1891:

"Section 1. That every corporation, joint-stock association, limited partnership, and company whatsoever from which a report is required under the twentieth section hereof shall be subject to and pay into the Treasury of the Commonwealth annually a tax at the rate of five mills upon each dollar of the actual value of its whole capital stock of all kinds, including common, special, and preferred, as ascertained in the manner prescribed in said twentieth section, and it shall be the duty of the treasurer or other officers having charge of any such corporation, joint-stock association, or limited partnership upon which a tax is imposed by this section to transmit the amount of said tax to the Treasury of the Commonwealth within thirty days from the date of settlement of the account by the Auditor-General and State Treasurer. Provided, that for the purposes of this act interests in limited partnerships or joint-stock associations shall be deemed to be capital stock, and taxable accordingly. Provided also, that corporations, limited partnerships, and joint-stock associations liable to tax on capital stock under this section shall not be required to make any report or pay any further tax on the mortgages, bonds, and other securities owned by them in their own right; but corporations, limited partnerships, and joint-stock associations holding such securities as trustees, executors, administrators, guardians, or in any other manner, shall return and pay the tax imposed by this act upon all securities so held by them, as in the case of individuals. And provided, further, that the provisions of this section shall not apply to the taxation of so much of the capital stock of corporations, limited partnerships, or joint-stock associations organized for manufacturing purposes which is invested in and actually and exclusively employed in carrying on manufacturing within the State, except companies engaged in the brewing or distilling of spirits or malt liquors and such as enjoy and exercise the right of eminent domain; but every manufacturing corporation, limited partnership, or joint-stock association shall pay the State tax of five mills herein provided upon such proportion of its capital stock, if any, as may be invested in any property or business not strictly incident or appurtenant to its manufacturing business, in addition to the local taxes assessed upon its property in the districts where located, it being the object of this proviso to relieve from State taxation only so much of the capital stock as is invested purely in the manufacturing plant and business. Provided, further, in case of fire or marine insurance companies the tax imposed by this section shall be at the rate of three mills on each dollar of the actual value of the whole capital stock."

"Section 22, Act of June 1, 1889. That, if the said officers of any such limited partnership, joint-stock association, or corporation shall neglect or refuse to furnish the Auditor-General, on or before the thirty-first day of December in each and every year, with the report and appraisement [of capital stock] as aforesaid, as required by the twentieth Section of this Act, it shall be the duty of the accounting officers of the Commonwealth to add 10 per centum to the tax of said limited partnership, joint-stock association, or corporation, for each and every year for which such report and appraisement were not so furnished, which percentage shall be settled and collected with the said tax in the usual manner of settling accounts and collecting such taxes; if the officers of any such limited partnership, association, joint-stock association, or corporation, or any of them, shall intentionally fail to comply with the requirements of the twentieth section of this act for three successive years, he or they shall be deemed guilty of a misdemeanor, and on conviction thereof shall be sentenced to pay a fine of five hundred dollars and undergo an imprisonment not exceeding one year, or both or either, at the discretion of the court."

Special Acts Relating to the Tax on Capital Stock.

The Act of June 23, 1893 (P. L., p. 417), provides for the incorporation of companies for the purpose of maintaining a bourse or exchange hall, or other building to be used in whole or part as a bourse or exchange hall, or as a meeting place for merchants and other business men.

Section 3 of this act provides that, in assessing the tax upon the capital stock of corporations accepting the provisions of this act, as provided in the second section thereof, that part of the capital stock of a corporation exempt from taxation shall bear the same proportion to its entire capital stock as the value of the real estate occupied by such bourse bears to the entire capital stock of such corporation.

Section 4 makes it the duty of the Auditor-General to determine what part of the capital stock of such corporation shall be exempt from taxation, and from his decision an appeal shall lie as now provided by law in other cases involving questions of taxation.

Section 5 provides that any corporation accepting the provisions of this act which shall, in any year, declare a dividend upon its entire capital stock, shall first file in the office of the Auditor-General a certificate setting forth the intent of such corporation to pay a dividend as aforesaid, and thereupon the entire capital stock of such corporation shall be subject to taxation for such year.

Distilling Companies. The Act of July 15, 1897 (P. L., p. 294), provides as follows:

"Section 2. Companies organized and incorporated for the purpose of distilling liquors and selling the same at wholesale, shall

constitute a separate class for the purpose of taxation; and every such corporation, joint-stock association, limited partnership, or company shall be subject to pay into the Treasury of the Commonwealth, annually, a tax at the rate of ten mills upon each dollar of the actual value of its whole capital stock of all kinds, including common, special, and preferred. The Auditor-General shall require said corporation to report to him, annually, all such facts as may be by him deemed necessary to arrive at the actual value of the capital stock of said corporation. He is hereby authorized and required to send out blanks in proper form, to secure such information as all other corporations are required by law to give the accounting officers in their annual reports, so that the actual value of the capital stock may be ascertained."

What the Tax Is. The tax upon capital stock of corporations is a tax upon their property, franchises, assets, and earning capacity. Fox's Appeal, 112 Pa., 337; Coatesville Gas Co. *v.* Chester Co., 97 Pa., 476; Com. *v.* Standard Oil Co., 101 Pa., 119; Pullman's Pal. Car Co. *v.* Com., 141 U. S., 18; Com. *v.* Sharon Coal Co., 164 Pa., 284.

In the last-named case the lower court states:

"There is no legal principle in the way of holding that the tax on capital stock is a tax on (*a*) property, including in the appraisement the (*b*) full value of the franchise enjoyed and exercised by the corporation, and (*c*) determining the value of these by the material result of their exercise."

(In New York the courts have held that the tax on capital stock imposed by the laws of that State, which is in most respects similar to the Pennsylvania tax thereon, is not a property tax, but a franchise tax solely.* Home Ins. Co. *v.* People, 92 N. Y., 328, and 119 U. S., 129.)

The tax upon capital stock is constitutional. Com. *v.* National Oil Co., 157 Pa., 515; Com. *v.* Mill Creek Coal Co., 157 Pa., 524.

Foreign corporations doing business in Pennsylvania are taxable, like domestic corporations, on so much of their capital as is invested within the Commonwealth, under the provisions of the fourth section of the Act of June 8, 1891.

* In New Jersey an annual tax of one-tenth of one per centum is imposed on all amounts of capital stock of corporations (except in the case of certain classes of corporations) issued and outstanding, up to and including three million dollars, and at a less rate on amounts in excess of that sum. This tax is denominated "an annual license fee or franchise tax" in the act creating it. It is not a tax on property, and not within the equality clause in the New Jersey Constitution. Stand. Underground Cable Co. *v.* Attorney-General, 1 Dick. Ch. Rep., 270.

It would appear, from a cursory reading of the tax laws of New Jersey, that all the State taxes imposed thereby on corporations are denominated "franchise taxes," with the obvious intention of placing them beyond the provisions of the equality clause of the State Constitution. It would seem, however, as though there must be, somewhere, a limit to the power of a State to relieve itself from all obligation to maintain an equality of taxation upon the same classes of property or of taxables, merely by denominating the taxes which it creates "franchise taxes." In Maine it was not long ago held that the gross receipts of a transportation company, derived from inter-State commerce, could be taxed, because the tax was a franchise tax, and not assessed upon the receipts themselves, but upon the franchise of the company, *as measured by its gross receipts.* If the mere employment of the term "franchise tax" leads necessarily to such results as these, it is time that State constitutions were so amended as to fix some limits to the imposition of that class of taxes.

It was formerly necessary, in order for a foreign corporation to become taxable on its capital stock in Pennsylvania, not only that it should have capital invested in the Commonwealth, but that it should also exercise its corporate functions therein. Com. *v.* Standard Oil Co., 101 Pa., 119.

The fourth Section of the Act of 1891, however, makes taxable the capital stock not only of foreign corporations "doing business in and liable to taxation within this Commonwealth," but also of those "having capital or property employed or used in this Commonwealth;" so that the decision cited is, doubtless, not applicable to the law now in force.

Foreign Transportation Companies. The fact that a foreign transportation company running its cars into, through, and out of the State, also operates them in other States, does not exempt the company from taxation upon the capital invested in said cars, in Pennsylvania. Pullman's Pal. Car Co. *v.* Com., 107 Pa., 156. Palace car companies whose cars run into this State and other States are taxable upon the proportion of their capital stock which the total number of miles travelled in Pennsylvania by their cars bears to the total number of miles travelled by all their cars in all States. Pullman's Pal. Car Co., 141 U. S., 18; Pullman's Pal. Car Co., 2 D. R., 618; S. C., 13 Pa. C. C., 54.

(For an account of the method of taxing Pullman's Palace Car Co., see under head of "Tax on Gross Receipts," *infra.*)

Railroad companies whose lines extend from Pennsylvania into other States are taxable upon the proportion of their capital stock which the miles of their main track in Pennsylvania bear to the total mileage of the companies. Com. *v.* Erie R. R. Co., 98 Pa., 127; Com. *v.* Western U. Tel. Co., 15 W. N. C., 331; Com. *v.* Del., L. & W. R. R., 145 Pa., 96.

How the Tax is Settled Against Telegraph Companies. Foreign or domestic telegraph companies, which do business in many States, and whose facilities for doing business in one State increase the same in another, are to be taxed, where the relative value of the tangible property representing capital within and without the State cannot be accurately ascertained, on the proportion of their entire capital stock which the length of their lines within the State bears to the total length of all their lines. Com. *v.* Western U. Tel. Co., 15 W. N. C., 331.

In the case above cited, it appeared, as a matter of fact, that the cost of constructing a mile of telegraph line, with poles and one wire, was equal to the cost of six additional wires upon the same poles. In settling tax on capital stock against telegraph companies the accounting officers generally use this ratio in making their calculations, unless a different ratio of cost is known to exist in any particular case.

Bridge Companies. Bridge companies connecting this with another State are taxable in Pennsylvania upon one-half of their

capital stock only. Com. *v.* Trenton Bridge, 9 Am. L. Reg. (O. S.), 298; Easton Bridge Co. *v.* Northampton Co., 9 Pa., 415.

Fire and Marine Insurance Companies. It will be observed that the rate of tax on fire and marine insurance companies organized under the laws of Pennsylvania is at the rate of three mills on the dollar of the cash value of their capital stock, instead of five mills, as in the case of other corporations subject to the tax.

Reports and Appraisements. Blanks upon which to make reports of capital stock are sent to the treasurer of each corporation subject to the tax, by the Auditor-General, on or about the first of November in each year. If these are not executed and returned on or before December 31st, following, the companies so failing to report within said period are subject to a penalty of 10 per centum of the amount of tax finally settled. Section 22 of the Act of June 1, 1889, provides, that if the officers of corporations subject to the capital-stock tax shall intentionally fail to make reports to the Auditor-General, as above, for three consecutive years, they shall be deemed guilty of a misdemeanor, and, on conviction, be sentenced to pay a fine of five hundred dollars and undergo an imprisonment not exceeding one year, or both, in the discretion of the court. This same section provides the penalty of ten per centum above referred to.

Section 4 of the Act of June 8, 1891, provides, *inter alia*, that

"In the event of the neglect or refusal of the officers of any corporation . . . for a period of sixty days, to make the report and appraisement to the Auditor-General as herein provided, it shall be the duty of the Auditor-General and State Treasurer to estimate a valuation of the capital stock of such defaulting corporation . . . and settle an account for taxes, penalty, and interest thereon, from which settlement there is no right of appeal."

This doubtless supersedes the general provisions of the Act of March 30, 1811, *supra*, for the making of estimated settlements, so far as the tax on capital stock is concerned. Whether it also repeals, by implication, the above provision of the Act of 1889, making a failure to report a misdemeanor, has never been determined. The appraisement of the stock of a corporation must be made in accordance with the following requirements:

1. It must be made by any two of the following officers: President (or chairman), secretary, and treasurer; and, where one person holds two offices, one other officer must join with him in making the appraisement.

2. The stock must be appraised at "its actual value in cash." A stock may have no market value, and yet have a very considerable intrinsic or prospective value. The price for which a majority of the stockholders would sell their shares is ordinarily to be considered a fair measure of the actual value of the capital stock, subject to the following requirements and limitations:

("A stock may have several values: a market value, determined by the selling price of its shares in open market; a speculative value, based on calculations of future prospects and contingencies; and the actual value, ascertainable from the intrinsic worth of its assets immediately available or unavailable, on its profits or losses, covering a fixed period, and on business calculations for the future; and other elements in the minds of business men may be taken into account." Com. *v.* Edgerton Coal Co., 164 Pa. 284.)

3. The actual value in cash must be given as it was between the first and fifteenth days of November for the year for which the report is made, and the value at that time was formerly decisive as to the value for purposes of taxation, provided it be not less than the average price for which the stock shall have sold during the tax-year. Pa. R. R. *v.* Com., 94 Pa., 474; Com. *v.* P. & R. R. R., 29 W. N. C., 101.

4. The stock must not be assessed at *less* than the average price at which it shall have sold during the tax-year, but it may and should be appraised at *more* than such average price, if the value of the capital stock between November 1st and 15th was greater than such average price. Com. *v.* Penna. R. R., 145 Pa., 74.

5. It must, further, not be appraised at a less value than its price or value as indicated by its net earnings, or amount of profit made, and either declared in dividends or carried into surplus or sinking fund. This provision, like the foregoing, establishes, merely, a minimum valuation below which the appraisement shall not be made, notwithstanding the actual value between November 1st and 15th. In other words, the appraisement never can be at a lower valuation than the actual value indicated by the price paid between November 1st and 15th, but it may be at a higher valuation

(*a*) If the average price for the year were higher;

(*b*) If the net earnings or profits indicate a higher value.

What value *is* indicated by a given amount of net earnings or profits is a question incapable of a determination applicable to all cases. It was attempted by the accounting officers, after the passage of the Act of June 8, 1891, to lay down a general rule that a stock paying six per cent. was worth par, one paying twelve per cent. was worth twice par, and so on in the same proportion.

This practice was founded on the dividend basis of taxing capital stock, which had obtained under former acts. Under the dividend-basis system, the capital stock of a corporation was taxed at one-half mill for each one per cent. of dividend paid or earned, where the dividends equalled or exceeded six per cent. Where the dividends were less than six per cent., the tax was three mills upon the appraised value of the capital stock. One-half mill for each one per cent. of dividend was the same, where a company paid exactly six per cent. in dividends, as three mills on the appraised value of the stock. Hence it was assumed that the former acts

had considered a stock paying 6 per cent. in dividends as worth par; and on this basis the practice above referred to was sought to be established.

The Supreme Court, however, in the cases of Com. *v.* Del., Sus. & Sch. R. R. Co., 165 Pa., 44; and Com. *v.* Edgerton Coal Co., 164 Pa., 284, *held*, that, in the absence of proof to the contrary, such an hypothesis might be resorted to, but that the true value of the stock of a corporation was a question of fact to be determined in each case, not only from the net earnings and profits, but from all other facts affecting the value of the stock.

The true effect, therefore, of the requirements relative to the net earnings and profits of a company seems to be, that, if such earnings or profits seem to indicate a higher value than that at which the stock is appraised, the accounting officers will require an explanation of the discrepancy, and, in the absence of a satisfactory explanation, they will raise the amount of the appraisement.

Weight to be Given to Prices at which Shares Sell. The price for which the shares of stock of a corporation sell is not necessarily conclusive as to the actual value of the capital stock of said company. The capital stock must not be appraised at less than the average price for which the shares sold during the year, but it may be appraised *above* that value if the value between the first and fifteenth days of November was higher, and if the value indicated by net earnings or profits was higher. The following quotations from recent decisions of the court show the weight which is to be given to the price at which shares of stock may have sold:

"While the price at which shares sell in the public market is not conclusive, and we would not feel ourselves bound by it where we were satisfied that all the relevant evidence in the case leads to the conclusion that it did not indicate the real value, we nevertheless feel that it is ordinarily entitled to careful consideration as an expression of the opinion of those presumably best acquainted with the actual financial status." Com. *v.* Phila. Co., 164 Pa., 284. (Opinion of lower court.)

"The aggregate market value for which the stocks will sell in the market does not necessarily indicate the actual value or the amount of property which a corporation may own . . . It may fall very short of it. Valuation includes, besides the value of the property, profits, and prospects, nature and extent of rights, and privileges and enjoyments." Com. *v.* D., S. & S. R. R. Co., 165 Pa., 44.

"A review of the facts shows that this appraisement is much in excess of the actual value of the capital and surplus of defendant, as shown on its books, and that a large item must be credited to the value of the defendant's franchise and its capacity to earn dividends. This illustrates what has been said in the case of Com. *v.* D., S. & S. R. R. Co., as to the principles on which the actual value in cash . . . is to be ascertained, and the ele-

ments which enter into the calculation, and demonstrates that the franchise . . . the right to carry on business, the privileges and immunities of the corporation, may be and frequently are of great value, and are properly subject to taxation." Com. *v.* Provident L. & T. Co., 164 Pa., 284. (The quotation is from the opinion of the court below.)

From the foregoing it will be seen that the price at which the shares of stock of a corporation may have sold is not conclusive as to the actual value of the capital stock of said company. The capital stock is to be appraised at its actual value in cash between the first and fifteenth days of November, and, if the shares of stock shall have sold for a higher average price than that value during the year, the capital stock must be appraised at at least as great a value as such average price. If, in addition, the net earnings or profits, the property, assets, and franchises of the company indicate a still higher value than such average price, then the capital stock must be appraised at the value so indicated.

Other Matters to be Considered in Making Appraisements.

"'The actual value in cash' is a question of fact which must be determined by considering the value of the tangible property, the amount of its business, the rate of dividend declared, and the extent and value of its good will, franchises, and privileges, as indicated by the evidence bearing upon those subjects at that particular time." Com. *v.* Hanuy Transfer Co., 141, Jan. T., Dau. C. P., 1895.

"The capital stock represents the franchises as well as the property of the company. In the sixth preamble of the act (of 1891) there appears a plain legislative purpose to include the franchise in fixing the value of the stock, and this is in harmony with the title and the provisions in respect to the taxation of it." Com. *v.* Del., Sus. & Sch. R. R. Co., 165 Pa., 44.

Where, owing to some extraordinary circumstances, such as losses by fire, the capital stock is worth less than its net earnings or profits would indicate, the stock should be appraised in accordance with the foregoing instructions, and the discrepancy between the appraised value and that indicated by the net earnings or profits should be explained in a sworn statement, made a part of the report.

In appraising capital stock the amount of the indebtedness of a corporation cannot be deducted from the value of the stock. Com. *v.* N. Y., P. & O. R. R. Co., 691 Com. Docket, Dau. C. P., 1896. This does not mean that the indebtedness of a company will not be taken into consideration when appraising the stock, or by the accounting officers when making settlements for taxes, but simply that the officers of a corporation, when appraising their stock for purposes of taxation, will not be permitted to say, "Our property, represented by our stock, is worth $500,000; but we have $400,000 of bonds outstanding, and therefore we will appraise our stock at but $100,000."

Where appraisements are not made in accordance with the foregoing requirements, the accounting officers exercise the discretion vested in them by the following provision of law, and raise the appraisements to such amounts as to them may seem proper, and settle tax thereon.

"Provided, that, if the Auditor-General and State Treasurer, or either of them, is not satisfied with the appraisement and valuation so made and returned, they are hereby authorized and empowered to make a valuation thereof based upon the facts contained in the report herein required, or upon any information within their possession, or that shall come into their possession, and to settle an account on the valuation so made by them for the taxes, penalties, and interest due the Commonwealth thereon, with a right to the company dissatisfied with any settlement so made against it to appeal therefrom in the manner now provided by law." Sec. 4, Act of June 8, 1891 (P. L., p. 229).

NOTE.—This provision, or a similar one, was first introduced in the Revenue Act of April 24, 1874 (P. L., p. 68), and has been incorporated in all subsequent revenue acts.

The questions on page 1 of the capital stock report blank must be answered as fully as possible, and where the facts justify the same, the word "None" or "Nothing" should be distinctly written opposite the proper question, instead of leaving such question unanswered, or making a dash or wave-line opposite to it.

Reports may be filed at any time between the first Monday of November and the thirty-first day of December succeeding. If not filed on or before the latter date, a penalty of ten per cent. is required to be added to the amount of the tax, by the accounting officers, under the following provision:

"That, if the said officers of any such limited partnership, joint-stock association, or corporation shall neglect or refuse to furnish the Auditor-General, on or before the thirty-first day of December in each and every year, with the report and appraisement as aforesaid, . . . it shall be the duty of the accounting officers to add ten per centum to the tax . . . for each and every year for which said report and appraisement were not so furnished, which percentage shall be settled and collected with the said tax in the usual manner of settling accounts and collecting such taxes." Section 22, Act of June 1, 1889. The subject of failure or neglect to report, altogether, has already been considered above.

Different Forms of Capital Stock Reports. For convenience's sake, blank forms of capital stock reports are prepared, slightly differing from each other, adapted for the use of different classes of corporations, respectively. The following different forms of capital stock report blanks are used:

1. Forms for the use of transportation, transmission, and electric-light companies.

2. Form for the use of mining, quarrying, coal and coke companies.

3. Forms for the use of manufacturing companies, or limited partnership or joint-stock associations organized for manufacturing purposes.

4. Forms for the use of limited partnership and joint-stock associations not organized for nor engaged in manufacturing, and

5. Forms for the use of corporations not included in the above enumerations.

As it sometimes happens that the name of a company is not sufficiently indicative of the business in which it is engaged to form a true guide in sending it proper blanks, it may occasionally happen that a corporation will receive capital stock report blanks not appropriate for its use. Officers of corporations should, therefore, before filling up their reports, make sure that they have the proper blanks, and, if not, they should apply to the Auditor-General for the right kind thereof. This should be especially looked to by the officers of manufacturing companies, as they must not expect to receive the exemptions to which they are entitled unless their reports are made on proper forms, so that the attention of the Department may be thus called to the fact that they *are* manufacturing corporations.

Settlements of Capital Stock Tax. On the receipt of the capital stock reports by the Auditor-General, they are filed as of the date of their receipt, and are then taken up in order, and settlements for the tax on capital stock are made thereon by the Auditor-General. The settlements and reports are then sent to the Treasury Department, where the settlements are approved by the State Treasurer. The papers are thereupon returned to the Auditor-General, who has a copy of each settlement made, and certified under his hand and seal, which copy is then mailed to the treasurer of the company against which the settlement was made, which company then has sixty days, as we have already seen, from notice of the settlement (*i. e.*, from the receipt of the copy), within which either to pay the tax, or, if dissatisfied with the settlement, to take an appeal to the Court of Common Pleas of Dauphin County. At the expiration of the said sixty days the settlement becomes final, and is conclusive against the company. The tax bears interest at 12 per cent. per annum from sixty days after date of settlement.

Where a company is incorporated during the tax-year, tax is settled upon its capital stock in the same proportion that the number of days during which it has been in existence during the tax-year bears to the whole number of days in such year; that is to say, if a company has been in existence six months of the tax-year only, its tax will be but one-half of what it would be for the entire year; if in existence but three months, then the tax would be but one-fourth of the tax for a year, and so on. Com. *v.* Wyoming Valley Coal Co., 14 Wright, 410; 50 Pa., 410.

The above is the uniform practice of making settlements against corporations for taxes, and the subject will not again be referred to in the consideration of other taxes.

Suggestions as to Making Reports. Where corporations are dissatisfied with the settlements made against them, or do not understand the basis upon which they are made, they should at once inquire of the Auditor-General the manner in which the amount of the tax was arrived at, so that if there is any error in their report, or if any part thereof has been misunderstood, they may file an affidavit making the necessary correction or explanation, with a request for a resettlement of the account. This often saves the expense of taking an appeal, and avoids the annoyance caused by permitting settlements to stand undisputed until they are of more than a year's standing, when only the Board of Public Accounts can resettle them. The tax on capital stock being a tax on the property, franchises, assets, etc., of a corporation (*see supra*), it follows that companies must make reports and pay taxes from the date of their incorporation, or from the date of investing capital in Pennsylvania, and *not* from the date of beginning business, nor from that of the issuing of shares of stock.

Distinction Between Capital Stock and Shares of Stock. There is a marked distinction between the capital stock of a corporation and its *shares* of stock. The capital stock represents the entire property, assets, earning capacity, and franchises of a company (*see supra*), while the shares of stock merely show what interest each individual shareholder has in such property and assets and the enjoyment of the franchises. Com. *v.* Standard Oil Co., 101 Pa., 148. The tax which we are considering is upon the capital stock, and not upon the shares of stock. Hence it is immaterial when the shares of stock of a corporation are issued, or whether they are ever issued. The capital stock is taxable without regard thereto.

Most classes of domestic corporations are required, before letters patent issue to them, to have at least ten per cent. of the amount of their authorized capital stock paid into their treasuries in cash, so that, as soon as these companies are incorporated, their capital stock has a taxable value.

When Capital Stock Has no Value. When the capital stock of a corporation has no actual value whatever, its officers must nevertheless continue to make formal reports, precisely as if the capital stock had value, save that they will appraise the capital stock at so many shares, each of the value of nothing, of the aggregate value of nothing; and such reports must be made annually while such stock remains worthless, or until the company is dissolved by decree of court, it being as necessary that the records of the Auditor-General's Department should show why a company was *not* taxed for a given year as that it should appear from such records why it *was* taxed for another year.

What Portion of the Capital Stock of Corporations is Not Taxable. The capital stock of corporations representing tangible property outside of Pennsylvania is not taxable. Com. *v.* Standard Oil Co., 101 Pa., 119; Com. *v.* Penna. Coal Co., 41 Leg. Int., 125. But such tangible personal property must be permanently located outside of the State; otherwise it is taxable. Com. *v.* Am. Dredging Co., 122 Pa., 386.

Patent Rights. Capital stock of corporations invested in patent rights granted by the United States is not taxable, but the capital must be invested in the right itself, and not in machinery for manufacturing under that right, nor in articles so manufactured, nor in permits to manufacture or rent, under that right. Com. *v.* Central D. & P. Telephone Co., 145 Pa., 121; Com. *v.* Edison Elec. Lt. Co., 145 Pa., 131; 157 Pa., 529; Com. *v.* Phila. Co., 157 Pa., 527.

United States Bonds. Capital stock of corporations invested in United States bonds is not taxable. Com. *v.* Lack. I. & C. Co., 129 Pa., 346. The shares of stock of banks are taxable, however, even though the capital stock of the banks issuing the shares is wholly invested in United States bonds. The capital stock so invested cannot be taxed, but the shares of stock may be. Van Allen *v.* Assessor, 3 Wall., 573; Bank of Louisville *v.* Com. of Kentucky, 9 Wall., 353.

Building and Loan Associations. The Act of May 22, 1883 (P. L., p. 39), provides:

"That mutual loan and building associations shall be exempt from the provisions of each and every law imposing taxes for State purposes on their capital stock or mortgages and other securities for moneys loaned to their members. . . ."

This provision relieves building and loan associations from making capital stock reports, and from the payment of capital stock tax. See *infra* as to the taxation of their matured shares of stock.

Foreign Telephone Company. A foreign telephone corporation leasing its machines to certain Pennsylvania companies, with the right to use them, the lessor retaining the property in them, was held not to be taxable in Pennsylvania on its capital stock invested in said telephones. The domestic companies carried on all the active business of telephonic communication, owned the lines and necessary apparatus, and maintained their offices and employed their own officers and agents. There was a provision in the contract that, on the failure of the Pennsylvania companies to do certain things, the foreign company might operate the telephones, but, as a matter of fact, it never had done so. Com. *v.* Bell Telephone Co., 24 W. N. C., 187.

The facts in this case were so peculiar that the decision therein hardly establishes any general principle.

Manufacturing Corporations. So much of the capital stock of corporations, limited partnership and joint-stock associations,

organized for manufacturing purposes, as is invested in, and actually and exclusively employed in, carrying on manufacturing within the State (except companies engaged in the brewing or distilling of spirits or malt liquors, and such as enjoy and exercise the right of eminent domain) is exempt from the tax on capital stock, but so much of the capital stock of said companies, so organized, "as may be invested in any property or business not strictly incident or appurtenant to their manufacturing business" is subject to said tax.

To gain the benefit of this exemption a company must

1. Be organized for manufacturing purposes; but it need not be organized *exclusively* for manufacturing purposes, as was required by the Acts of 1889 and 1891.

2. It must not be engaged in the brewing or distilling of spirits or malt liquors, nor can it enjoy and exercise the right of eminent domain, although it would seem that the mere possession of the power to exercise the right of eminent domain, without the actual exercise thereof, would not prevent a company from being entitled to the exemption.

This exemption is not unconstitutional. Hawes Mfg. Co.'s Appeal, 1 Monagan, 353; Fox's Appeal, 17 W. N. C., 449. Neither is the exemption unconstitutional because corporations engaged in the manufacture of spirituous or malt liquors, or having and enjoying the right of eminent domain, are excepted from its benefits. Com. *v.* Germania Brewing Company, 145 Pa., 83.

What Companies are, and what are not, Manufacturing Companies within the Meaning of this Exemption. Companies organized for the purpose of manufacturing steam and supplying the same to buildings and real estate owned by them, are not. Com. *v.* Arrott Mills Co., 145 Pa., 69. Neither are electric-light companies. Com. *v.* Northern E. L. & P. Co., 145 Pa., 105; Com. *v.* Edison Elec. Lt. Co., 145 Pa., 131; Com. *v.* Edison Co., 170 Pa., 231.

But companies engaged in refining crude petroleum are manufacturing companies within the meaning of the exemption. Com. *v.* Atlantic Refining Co., 2 Pa. C. C., 62. So are companies engaged in dyeing and finishing woollen and cotton goods. Com. *v.* Quaker City Dye Works, 5 Pa. C. C., 94. So are artificial gas companies. Com. *v.* Allegheny Gas Co., Dau. C. P., opinion delivered November 28, 1893; and creamery companies; and

Corporations organized for the purpose of publishing newspapers, and actually publishing them, are manufacturing corporations within the meaning of the act exempting such corporations from taxation, and so are publishing corporations of all kinds.*

* In the case of Com. *v.* D. B. Canfield Co., Limited, Dauph. C. P., op. filed April 14, 1890, (unreported, as the writer thinks) it was held that a company, not owning a printing office, but which prepared the copy for its periodical, and sent it to a printer to be printed and stereotyped, then sent the printed pages to a binder, with whom it had a separate contract, to be bound, and buying the paper on which the periodical was printed from a third party,

What Capital Stock is "Actually and Exclusively Employed in Manufacturing" within this Exemption. Dwelling-houses rented to employes are not property actually and exclusively employed in manufacturing so as to entitle the capital stock invested therein to exemption (Com. *v.* Mahoning Rolling Mills, 129 Pa., 360); but otherwise, if there are no other means by which the operatives can be housed. But the company must not, by the selection of the site for its plant, intentionally create the necessity for the erection of the houses, or the capital invested in them will be taxable. Com. *v.* Westinghouse Air Brake Co., 151 Pa., 276.

Capital invested in a coal mine by a manufacturing company is not "used in manufacturing," within the law, even though all the coal mined is used by the company in its manufacturing operations. Com. *v.* Lack. Iron & Coal Co., 129 Pa., 346; Com. *v.* Juniata Coke Co., 157 Pa., 507; Com. *v.* Savage Fire Brick Co., 157 Pa., 512.

A corporation organized for the purpose of "mining, quarrying, manufacturing, and selling slate and slate products," which invests a portion of its capital in mining slate for its own use, from its own land, is subject to taxation on such portion of its capital stock as is thus invested in mining, and also on the capital invested in the land not occupied by its manufacturing plant. Com. *v.* East Bangor Slate Co., 162 Pa., 599.

A coke company is taxable on so much of its capital stock as it may have invested in coal mines from which to supply its coke ovens. Com. *v.* Juniata Coke Co., 157 Pa., 431.

A limited partnership organized for the purpose of manufacturing refined oils from crude petroleum, and for the acquisition of the necessary lands, etc., is subject to taxation on the portion of its capital invested in mining and transporting crude petroleum. Com. *v.* National Oil Co., Lim., 157 Pa., 516.

Distilling Companies. As we have already seen, *supra*, companies organized and incorporated for the purpose of distilling liquors and selling the same at wholesale are made a separate class for purposes of taxation, and are taxed annually at the rate of ten mills upon the dollar of the actual value of their whole capital stock, by Act of July 15, 1897, Sec. 2 (P. L., p. 294). The tax imposed is the general tax on capital stock, so that the only difference between the taxation of the capital stock of such companies and that of other corporations is, that tax is settled on

was yet a manufacturing corporation within the meaning of the act exempting such corporations from tax upon their capital stock. This decision was so radical that the accounting officers have since admitted the right of all publishing corporations to such exemption.

It may be of interest to note that in New Jersey it is held that, under their tax laws, a newspaper publishing company is not a manufacturing corporation, but that the business of book printing, engraving, electrotyping, and lithographing is manufacturing within the meaning of the act. Evening Journal Ass'n *v.* Board of Assessors, 18 Vr., 36. To the ordinary mind it will seem difficult to determine why, if a book is a manufactured article, a newspaper, which goes through almost exactly the same processes in the course of its production, is not a manufactured article, also.

their capital stock at the rate of ten mills instead of five. The writer is not aware of any law by which distilling companies can be incorporated under the laws of the Commonwealth; but this provision is, of course, applicable to any foreign corporation of that character operating in the Commonwealth.

Exemptions to which Corporations Paying a Tax upon Capital Stock are Entitled. 1. Corporations paying a tax upon their capital stock, or expressly relieved from such payment—*i. e.*, manufacturing companies—thus relieve their shares of stock from taxation in the hands of the holders thereof. Sec. 1, Act of June 8, 1891.

2. "Corporations, limited partnerships, or joint-stock associations liable to tax on capital stock . . . shall not be required to make any report or pay any further tax on the mortgages, bonds, and other securities owned by them in their own right." Sec. 1, Act of June 8, 1893. Com. *v.* Lehigh Coal and Navigation Co., 162 Pa., 603. But such companies are taxable upon all such securities held by them "as trustees, executors, administrators, guardians, or in any other (like) manner." Sec. 1, Act of June 8, 1893.

How far the above provision relating to the exemption of corporations from further taxation upon their bonds, mortgages, etc., applies to manufacturing corporations, it is not easy to state. Manufacturing corporations, of the classes entitled to exemption, are certainly "liable to tax on capital stock" on so much of their capital stock as "may be invested in any business or property not strictly incident or appurtenant to their manufacturing business," and hence it would seem that they should come, to a certain extent at least, within the provisions of Sec. 1 of the Act of 1893, quoted above in paragraph 2. On the other hand, they are not "liable to tax on capital stock" on so much of their capital as "is invested in and actually and exclusively employed in carrying on manufacturing within the State," and hence, to a certain extent also, they are *not* within the provisions of the law above referred to.

It was held in the case of Com. *v.* Westinghouse Air Brake Co., 151 Pa., 276, that so much of the capital stock of a manufacturing corporation as was invested in the shares of stock of other corporations was taxable.

In the case of Com. *v.* Fall Brook Coal Co., 156 Pa., 488, however, the Supreme Court held that

"A tax upon the capital stock in the hands of a corporation and a tax upon the owners of the parts or shares into which the capital stock is divided, upon their respective holdings, is double taxation, and will not be supported, except by express enactment."

The court reconciled this holding with that in the Westinghouse case by stating, that in the former case it did not appear what the corporations were, in the shares of which a portion of the company's capital stock had been invested, nor whether such companies had paid tax upon their capital stock.

In the subsequent case of Com. *v.* United Gas Improvement Co., 162 Pa., 602, the Supreme Court held squarely that, "When a tax has been paid by a corporation upon its entire capital stock, the same stock cannot again be charged with taxes in the hands of the separate holders of the shares into which they may be divided, unless such double taxation is expressly authorized by statute." And it makes no difference who is the shareholder, whether a firm, limited partnership, or association. Com. *v.* Lehigh Coal & N. Co., 162 Pa., 603.

From the foregoing it is evident that manufacturing corporations are entitled, equally with other companies, to exemption from tax on so much of their capital stock as is invested in the shares of domestic corporations paying a capital stock tax. But they are thus exempted, apparently, not under the provisions of the Act of 1893, but because to tax them on the capital invested in such shares would constitute a double taxation, which is not to be permitted except where expressly provided for. We have not, therefore, made much progress in ascertaining how far the exemption from "other taxation upon bonds, mortgages, etc.," provided for in the Act of 1893 applies to manufacturing companies.

It would seem evident that, if a manufacturing corporation is taxed upon so much of its capital as is invested in bonds, mortgages, etc., it should not be required to return those same obligations to the local assessors, for this would assuredly as much constitute "double taxation" as the taxation of the shares of a company, held by another corporation, after the capital stock of the corporation issuing the said shares has already been taxed, and we have just seen that *that* is held to be double taxation. There is certainly no express direction of law for such double taxation in the one case more than in the other, and without such express provision such double taxation is not permitted.

The fact is, that it is the practice of the Auditor-General's Department to tax manufacturing corporations on the capital invested in the bonds, mortgages, etc., held by them. The capital stock report blank, prepared for the use of manufacturing corporations, and which calls for statements of all classes of property held to be taxable, as not being "actually and exclusively employed . . . in manufacturing," contains the following paragraph:

"6. Personal property, such as bonds (except U. S. bonds), stocks, mortgages, or other securities."

In answer to which manufacturing corporations are required to state the amount of capital stock invested in the classes of property therein enumerated; and tax is settled on the amount thereof. The *stocks* required to be reported by said paragraph are those of companies not subject to the tax on capital stock, and those of foreign corporations.

It would seem, therefore, as though manufacturing companies,

being taxed on so much of their capital as is invested in mortgages, bonds, etc., should be relieved from taxation on the bonds, mortgages, etc., in which that capital is invested. But the personal property return blank, which all taxables are required to fill out, contains the following paragraph:

"Manufacturing Companies. These companies are subject to the tax on personal property the same as individuals, and must make a return in the same manner, except those engaged in the brewing or distilling of spirituous or malt liquors, and such as enjoy and exercise the right of eminent domain. These companies [*i. e.*, brewing and distilling companies, etc.] are required to pay a capital stock tax direct to the State, and are not, therefore, required to pay any further tax upon personal property owned by them."

From the wording of this it would be inferred that manufacturing companies pay no capital stock tax whatever, unless engaged in brewing or distilling, or enjoying and exercising the right of eminent domain. But, as we have already seen, this is not the case.

The conclusion to be drawn from all the foregoing is, that if a manufacturing company knows that it has been taxed for a given year upon so much of its capital stock as is invested in bonds, mortgages, etc., it should refuse to return such bonds, mortgages, etc., to the local assessor, and, in the belief of the writer, it will win any litigation which may grow out of such refusal.

Local Taxation. By the payment of the tax on capital stock corporations do not relieve themselves from any local taxation to which they would otherwise be subject. We have already seen to what extent *public* corporations are exempt from such local taxation. The tax on personal property is not "local taxation" (see Wilkes-Barre Deposit & Savings Bank *v.* Wilkes-Barre, 148 Pa., 601); to what extent corporations paying tax on capital stock escape the tax on personal property has been already explained. Manufacturing corporations, like other corporations, are still subject to taxation for county, borough, school, and township purposes. Hawes Mfg. Co.'s Ap., 24 W. N. C., 302.

The tax on capital stock is a tax for State purposes only, so that local taxation upon the property in which the capital stock of a company is invested does not constitute double taxation. Com. *v.* Cem. Co., 170 Pa., 227. Neither does the payment of any license relieve a company from the payment of tax upon capital stock, nor does the payment of the tax upon capital stock relieve from the payment of any license to which a corporation would otherwise be subject. A license is a permission to do or not to do a certain thing; the license fee is the price paid for that permission. The payment of a license fee, therefore, can in no wise relieve from the payment of a tax.

Miscellaneous. When the capital stock of a corporation has been increased during the course of a tax-year, the tax on the

increase will be apportioned with regard to the length of time it has been in existeuce. Com. *v.* Machine Co., 2 Chest. Co., 186.

When the rate of capital stock tax is changed during a tax-year, a company is taxable at the old rate until the new goes into effect, and at the new rate for the balance of the tax-year. Ebervale Coal Co. *v.* Com., 91 Pa., 47.

Apportionment of Capital Stock for Taxation. Where a manufacturing corporation with a capital stock of, say, one hundred thousand dollars, and possessing property to that value, has fifty thousand dollars thereof invested in property not actually used in manufacturing, and hence taxable, it is evident that such company will be taxed, if its capital stock is appraised at par, on fifty thousand dollars of such stock, and will be exempted from tax on the remainder thereof. But suppose that the stock of the company is appraised, and the appraisement is accepted, at but seventy-five thousand dollars. In such a case, were tax to be settled on fifty thousand dollars of capital stock, two-thirds of the entire stock would be taxed, while in the former case but one-fourth would be taxed. An apportionment of the stock taxable, therefore, becomes necessary, which is made according to the following formula: As all the property of the company is to the amount of property not invested in manufacturing, so is the appraised value of the stock to the amount of stock taxable; or, to apply the proportion to the above case, as one hundred thousand dollars is to fifty thousand dollars, so is seventy-five thousand dollars to thirty-seven thousand five hundred dollars, the proportion of stock taxable. Similar apportionments are made in all cases where any portion of the capital stock of a company is entitled to exemption from taxation, for any cause whatever, when the stock is appraised at less than par, and such appraisement is accepted. See Com. *v.* Lack. I. and C. Co., 129 Pa., 346; Com. *v.* Glendon Iron Co., Dau. C. P., No. 110, Mch. T., 1892.

CHAPTER IV.

TAX ON CORPORATE, COUNTY, AND MUNICIPAL LOANS.

THE obligations of public or private corporations held by residents of Pennsylvania are subject to a tax of four mills on the dollar of the nominal value thereof, which tax is collected by the treasurers of the corporations issuing the obligations, by deducting the tax from the interest paid thereon. The holders of the obligations are then exempt from taxation thereon in their hands.

The State tax on corporate loans is identical in character with the State tax on personal property. In Commonwealth *v.* Lehigh Valley R. R. Company, 129 Pa., 445, the Supreme Court says:

"A careful examination and analysis of the provisions of the fourth section of the Act of 1885, that imposing a tax on the obligations of private corporations, is necessary to a clear understanding of the purpose of the Legislature. It will be observed that the tax, which the treasurer of the corporation is by this section authorized and directed to assess and collect, is 'the tax imposed and provided for State purposes;' that is to say, the tax which is imposed and provided by the first section of the same act, upon the general class of subjects, consisting of mortgages, money owing by solvent debtors, etc., at the rate of three mills on the dollar of the value thereof, annually. The effect of the fourth section . . . was to subdivide this general class into two particular classes, one embracing the debts of private corporations, to be taxed at the rate specified on their nominal value, the other embracing the residue of the general class. . . . It is plain, then, that the tax in question, although rated on the nominal value, is 'the State tax imposed and provided on mortgages, money owing by solvent debtors,' etc."

It is evident that the opinion above quoted is also applicable to the tax on county and municipal loans, and that the taxes on corporate, county, and municipal loans are identical *in character* with the State tax on personal property.

Inasmuch as such loans are always supposed to be of record with the corporations, counties, and municipalities issuing them, it was deemed better for the purpose of accurately collecting the tax thereon to make such corporate, county, and municipal obligations separate subjects of taxation, and to require the treasurers of the corporations, counties, and municipalities issuing them to collect the tax by deducting it from the interest paid thereon, rather than to depend upon the holders of the obligations returning them to the local assessors for taxation.

County and municipal loans were the first to be segregated from the classes of property subject to the State tax on personal property, by the Act of April 29, 1844, Section 42 (P. L., p. 501), which Act was amended by that of April 30, 1864 (P. L., p. 219), and is still in force as so amended. These acts will appear hereafter.

The first act making the loans of private corporations a separate subject of taxation was that of April 30, 1864 (P. L., p. 218), Section 3, which provided that the officers of every company paying interest to its depositors, bondholders, or other creditors, "upon which by the laws of the Commonwealth a State tax is imposed, shall, before the payment of the same, retain from the said depositors, bondholders, or creditors, the amount of State tax imposed by existing laws, and shall pay the same over to the State Treasurer." This law was superseded by Section 11 of the Act of May 1, 1868 (P. L., p. 108), which exempted banks and savings institutions from the payment of said tax, and required all other companies to deduct, in place of "the State tax imposed by existing laws," a tax of five per cent. upon every dollar of the interest (*not* on the principal) paid on their loans.

This section was amended by Section 4 of the Act of March 21, 1873 (P. L., p. 46), which re-enacted its provisions, with the additional requirement that such tax should be collected and paid semi-annually on the first days of January and July.

The eleventh section of the Act of April 24, 1874 (P. L., p. 72), repealed the fourth section of the Act of 1873, and wholly abolished the tax.

The tax on corporate loans was, however, revived by Section 17 of the Act of June 7, 1879 (P. L., p. 120), which required all corporations paying interest on loans "hereby taxed for State purposes," to deduct the said tax from said interest and pay the same into the State Treasury. This, it will be seen, was an attempt to return to the original principle of collecting the tax on the obligations, instead of a tax on the interest paid *on* the obligations.

This provision was superseded by the second section of the Act of June 10, 1881 (P. L., p. 99), which is as follows:

"That hereafter all corporations paying interest on a loan or loans which are taxable for State purposes, whether secured by bond, mortgage, recognizance, or otherwise, shall report annually in the month of November, to the Auditor-General, the amount of such indebtedness owned by residents of this Commonwealth, as nearly as can be ascertained, under the oath of the president or treasurer, and shall pay into the State Treasury four mills on every dollar of such indebtedness, so returned and owned by residents as aforesaid, within fifteen days after the thirty-first day of December in each year; and for every failure to report or pay as aforesaid the Auditor-General shall add ten per centum as a pen-

alty to the said tax, and the said tax may be deducted by the corporation paying the same from the interest on such indebtedness, whereupon such indebtedness, whether secured by bond, mortgage, judgment, or otherwise, shall be exempt from other taxation in the hands of the holders thereof."

The Acts of 1879 and 1881, so far as they related to the taxation of corporate loans, were declared unconstitutional by the Supreme Court of the Commonwealth in the case of Commonwealth *v.* Lehigh Valley R. R. Company, 104 Pa., 89, upon the ground that they contained no provision for the assessment and valuation of the loans taxed, and hence did not constitute an independent scheme for the taxation of corporate loans. The provisions of these acts upon this subject were, accordingly, superseded by the fourth section of the Act of June 30, 1885 (P. L., p. 193), which is still in force, and appears later, in its appropriate place.

As appears from the foregoing, corporate loans are of two classes:

1. County and municipal loans.
2. Loans of private corporations.

1. Of County and Municipal Loans.

County and municipal loans are taxed in the manner prescribed by Section 42, Act of April 29, 1844 (P. L., p. 501), which is as follows:

"And that it shall be the duty of the treasurer of each county, incorporated city, district, and borough of this Commonwealth, on the payment of any dividend or interest, to any holder or agent claiming the same, on any scrip, bond, or certificate of indebtedness issued by said incorporated city, district, and borough aforesaid, to assess the tax herein made and provided for State purposes, upon the nominal value of each and every said evidence of debt; said tax to be deducted by the said treasurer on the payment of any interest or dividend aforesaid, and the same shall be held by him until paid over to the State Treasurer, and the said treasurers shall be subject to the same penalties and liabilities now prescribed by existing laws in relation to taxes on bank dividends."

This section was substantially re-enacted by Section 4, Act of April 30, 1864 (P. L., p. 218), which is as follows:

"Section 4. That the treasurer of each county and city, the burgess or other chief officer of each incorporated district or borough of this Commonwealth, within ninety days after the passage of this Act, shall make return, under oath or affirmation, to the Auditor-General, of the amount of *scrip, bonds,* or *certificates of indebtedness,* outstanding by said county, city, district, borough, or incorporation, as the same existed on the first day of January, one thousand eight hundred and sixty-four, and of each succeeding year thereafter, together with the rates of interest thereon, at each of those periods, under the penalty of five thousand dollars, the

amount to be settled by the Auditor-General, and the amount thereof sued for, and collected, as debts due by defaulting public officers are collected ; Provided, that, on the receipt of said returns, the Auditor-General shall proceed to settle the accounts of each county, city, and borough with the Commonwealth, fix the State tax due and unpaid, and transmit notice of the amount, by mail, to officers making said returns; and that if the amount, so found due, shall not be paid within sixty days, the Attorney-General shall sue and collect the same, with interest from the date of such settlement; and hereafter it shall be the duty of the treasurer of every county, city, borough, and incorporated district in this Commonwealth, to deduct the said State tax on payment of any interest, or dividend, on debts due by the county, city, borough, or incorporated district, and pay the same over to the State Treasurer, within thirty days after the said interest, or dividend, has fallen due."

It will be observed that the Act of 1844 provides that the tax shall be assessed " upon the *nominal* value of each and every said evidence of debt," while the Act of 1864 merely provides that the treasurer of each county, city, and borough shall " make return . . . of the amount of scrip, bonds, etc.," and the Auditor-General shall then " proceed to settle the accounts of each county, . . . fix the State tax due and unpaid," etc. It is held by the Auditor-General's Department, however, that the tax is still upon the nominal value of such obligations, and not upon the actual value. What makes it appear probable that this was the intention of the Legislature is, that the fourth section of the Act of June 30, 1885, creating the tax on the loans of private corporations, provides for the collection of the tax on the nominal value, also, of such corporate obligations, it thus appearing as though it had been the uniform legislative intent to impose tax upon the nominal value of all corporate, county, and municipal obligations.

The rate of taxation on municipal loans is fixed at four mills by the provisions of Section 1 of the Act of June 8, 1891 (P. L., p. 229), which also fixes the same rate of taxation on all other taxable personal property.

The Act of March 24, 1877 (P. L., p. 44), provides:

" That the scrip, bonds, and certificates of indebtedness of any county in this Commonwealth, owned by any public corporation within such county, and the income of which is by law appropriated to the support of the poor and the maintenance of the public roads of such county, be and the same are hereby exempted from taxation for State purposes."

Decisions. The tax upon the loans of counties and municipalities is constitutional. Com. *v.* Chester City, 123 Pa., 623; Com. *v.* Martin, 107 Pa., 205.

Outstanding bonds of a city, purchased by it, and held in its sinking fund, are not taxable. Com. *v.* City of Reading, 15 W.

N. C., 529; Com. *v.* City of Allegheny, 16 Ib., 316; Com. *v.* Martin, 107 Pa., 205.

Nor are those which are overdue, outstanding, and unredeemed. Com. *v.* Allegheny City, 15 W. N. C., 316.

School districts are not such "incorporated districts" as are required to collect the State tax on their bonds from the interest paid thereon, by the forty-second section of the Act of 1844, but school bonds should be returned to the local assessors by the holders thereof. Wharton *et al. v.* School Directors, 42 Pa., 358. Bonds issued in payment of a subscription to a railroad are taxable, and the treasurer of the city or county issuing them should see that the tax is retained from the interest, although the latter is practically paid by the railroad. Com. *v.* Morrison, 1 Pears, 315. It is the duty of the city treasurer to retain the tax out of the interest on city bonds, although the bond forms part of the capital of a savings-bank upon which it already pays the eight-mill tax. Wilkes-Barre Savings and Deposit Bank *v.* Wilkes-Barre, 148 Pa., 601.

If the return of a city to the Auditor-General does not show that any of its bonds are held by non-residents of the State, the bonds will be taxed as though held by residents. Com. *v.* City of Chester, 123 Pa., 626. This decision has, however, been materially departed from. See *infra*, under the head of Corporate Loans.

The duties of the treasurers of cities, counties, and boroughs are practically the same, in the matter of deducting the tax from the interest paid on the obligations issued by their cities, counties, or boroughs, and in the making of reports to the Auditor-General of the number, amount, and character of such obligations, as the duties of the treasurers of private corporations in the collection of the tax on the obligations of their respective corporations and in the making of reports of such obligations. The authorities quoted and the statements made under the head of "Loans of Private Corporations" are, therefore, applicable to the duties of such treasurers of cities, counties, and boroughs.

It will be borne in mind that the treasurers of school districts and those of townships are *not* required to collect the tax on the obligations issued by their respective districts or townships. Such obligations are returnable to the local assessors, like the obligations of individuals, and are taxed directly to the holders.

The treasurers of counties, cities, and boroughs receive the same commission for collecting the tax on the loans of their respective counties, cities, and boroughs as is paid, under the Act of June 30, 1885, to the treasurers of private corporations for performing this same duty. The Act of April 15, 1834 (P. L., p. 544), provided that—

"Section 42. Each county treasurer shall be entitled to deduct from the gross amount of moneys received by him for the use of

the Commonwealth, on each separate account he is required to keep and settle, a commission in the following proportions, viz.: where the whole sum accounted for and paid into the State Treasury, or otherwise, for the use of the Commonwealth, as directed by law, arising from either of the accounts specified in this Act, does not exceed one thousand dollars, at the rate of five per cent.; when it exceeds that sum and does not exceed two thousand dollars, one per cent. for such excess over one thousand dollars, and on all beyond the sum of two thousand dollars, one-half of one per cent."

The tax on county, city, and borough loans was not created, as we have already seen, until the passage of the Act of April 29, 1844. The said act, creating the tax, provided for no compensation for the treasurers of the counties, cities, and boroughs collecting the same, but it seems to have been the practice from the beginning to pay county treasurers the commission, on the collection of this tax, provided for in the Act of 1834, above quoted, notwithstanding that the said Act of 1834 limited the payment of the commission to "accounts specified in this act," and, of course, the tax on county loans was not included amongst such accounts. The taxes on city and borough loans were settled at the same desk with the tax on county loans, and, in the course of time, without any special provision of law therefor, that the writer can find, the practice was established of paying to the treasurers of cities and boroughs the same commission for collecting the tax on the loans of their respective cities and boroughs that was paid to county treasurers for similar services, as above.

Neither the Act of April 29, 1844, nor that of April 30, 1864, relating to the tax on county and municipal loans, makes any provision for the payment of this commission, the custom of paying which grew up as above stated.

When the Act of June 30, 1885, was passed, creating the existing tax on loans of private corporations, it required the payment to the treasurers of the corporations collecting the tax of the same compensation for their services "that city and borough treasurers receive for similar services." The Act of 1885, therefore, recognizes the practice of paying city and borough treasurers this commission, and doubtless thus authorizes the practice to a sufficient extent.

2. Loans of Private Corporations.

The indebtedness of private corporations is taxed under the provisions of Section 4 of the Act of June 30, 1885 (P. L., p. 193), which is as follows:

"Section 4. That hereafter it shall be the duty of the treasurer of each private corporation incorporated by or under the laws of this Commonwealth, or the laws of any other State, or of the United States, and doing business in this Commonwealth, upon

the payment of any interest on any scrip, bond, or certificate of indebtedness issued by said corporation to residents of this Commonwealth, and held by them, to assess the tax imposed and provided for State purposes upon the nominal value of each and every said evidence of debt, and to report on oath annually, on the first Monday of November, to the Auditor-General, the amount of indebtedness of the corporation owned by residents of this Commonwealth, as nearly as the same can be ascertained, and it shall be his further duty to deduct three [four] mills on every dollar of the interest paid as aforesaid, and return the same into the State Treasury within fifteen days after the thirty-first of December in each year, and his compensation for his services shall be the same that city and borough treasurers receive for similar services; and for every failure to assess and pay said tax, and make report as aforesaid, the Auditor-General shall add ten per centum as a penalty to the amount of the tax in payment of said tax by a corporation; the bonds, certificates, or other evidence of indebtedness issued by it shall be exempt from all other taxatiou in the hands of the holders of the same."

The language of this section would seem to indicate that the tax was intended to be laid on the amount of interest paid, and not on the principal sum of the indebtedness, but the courts have uniformly held that the tax is to be collected on the nominal or par value of the principal sum of the indebtedness, and *not* on the amount of interest paid.

The rate of tax, as in the case of county and municipal loans, is fixed at four instead of three mills by the first section of the Act of 1891.

The proviso to Section 2, Act of June 1, 1889 (P. L., p. 420), is as follows:

"That the taxable person, copartnership, unincorporated association, joint-stock association, limited partnership, corporation, or other person making the return aforesaid [return of personal property to the assessor for taxation] shall not include in said return the obligations of public or private corporations, the tax on which is required by law to be collected from the holder of such obligation and paid into the State Treasury by the corporation, it being the true intent and meaning of this act that the provisions of law in force at the time of the passage of this act relating to the collection of the tax on such obligations shall remain unaffected by the present act."

Decisions. The tax on the loans of private corporations is constitutional. Com. *v.* Lehigh Valley R. R. Co., 129 Pa., 429; Coal Ridge Imp. Co. *v.* Jennings, 127 Pa., 397; Com. *v.* Del. Division Canal Co., 123 Pa., 594.

The tax on corporate loans was not repealed by the Act of June 8, 1891. Com. *v.* Wilkes-Barre Railway Co., 29 Atl. Rep., 696.

Foreign corporations doing business in the State are required,

equally with domestic companies, to report their loans held by residents of Pennsylvania, and to collect and pay the tax thereon. Com. *v.* Del. & H. Canal Co., 150 Pa., 245; Com. *v.* N. Y., L. E. & W. R. R. Co., 129 Pa., 463; 150 Pa., 234; Com. *v.* R. R. Co., 145 Pa., 57.

The Supreme Court of the United States, however, in New York, Lake Erie & Western Railroad Company *v.* Commonwealth, 153 U. S., 628, held that the State of Pennsylvania could not "constitutionally impose upon the N. Y., L. E. & W. R. R. Co. the duty, when paying in the city of New York the interest due upon scrip, bonds, or certificates of indebtedness of that company held by residents of that State, of deducting from the interest so paid the amount assessed upon bonds and moneyed capital in the hands of such residents."

As a matter of fact, the greater part of the foreign corporations doing business in Pennsylvania, which issue bonds, scrip, and certificates of indebtedness, are railroads or companies of a similar nature, and these almost all pay the interest on their obligations by cheques drawn in New York or some other place without the State. The effect of this decision has been, therefore, to relegate the obligations of foreign corporations doing business within the State to taxation in the hands of the holder; and residents holding such bonds, etc., should, therefore, include the same in their returns of personal property made to the local assessors, instead of having the tax thereon deducted from the interest paid to them on such obligations.

Loans held by non-residents of Pennsylvania are not taxable. State Tax on Foreign Held Bonds, 15 Wall., 300, 326.

But corporations must prove affirmatively that their loans *are* held by non-residents, in order to entitle them to exemption. Com. *v.* Canal Co., 123 Pa., 594; Com. *v.* City of Chester, 123 Pa., 626; Com. *v.* Salt Company, 145 Pa., 53.

And corporate loans will be assumed to be held by residents of Pennsylvania, in the absence of proof to the contrary. Com. *v.* Lehigh Valley R. R. Co., 129 Pa., 429.

Bonds issued to non-residents are not taxable, however, unless it be affirmatively shown that they belong to residents of Pennsylvania. Com. *v.* R. Company, 9 C. C. R., 309.

NOTE.—Recent decisions have very materially modified the law, as given above, as to the liability to taxation of the obligations of domestic corporations not positively shown to be held by non-residents, as appears from the following statement:

As the law is now construed, the treasurer of a corporation must make due and diligent efforts to ascertain where the obligations of his company are held—that is, the residences of the holders thereof. Whether he does or does not make such proper effort is a question of fact to be determined, in the first instance by the Auditor-

General, and, afterward, if an appeal be taken to the Court of Common Pleas of Dauphin County, by that tribunal. If such treasurer is found to have made such proper and exhaustive effort, and is still unable to ascertain the residences of the holders of the obligations of his company, the said obligations, so held by persons whose residences are unknown, will be exempted from taxation; but if he is *not* found to have made such proper effort, the said obligations, so held, will be taxed; the company being held for the tax, if it fails to collect the same as required by law.

It seems not to affect the matter, even though the Auditor-General's Department may have ascertained the residences of some of the holders of the obligations returned as held by persons whose residence is unknown, and have ascertained that such residence is within this State. The fact that the Auditor-General ascertained such fact does not prove that the treasurer of the company could, necessarily, have ascertained it, in the absence of proof to the contrary. Consequently, although the Auditor-General may know that certain obligations are held by residents of Pennsylvania, tax cannot be settled against the company issuing the same, on account thereof, if the treasurer of the said company, in good faith, after a proper search, reports that said obligations are held by persons whose residences are unknown.

Where, however, a corporation agrees, on the issue of any obligations to "pay any and all sums assessed or to be assessed by the States of Maryland and Pennsylvania, or either of them, for State tax upon loan or interest, or any part thereof, when the same shall be payable by the holder or holders of interest coupons attached," or binds itself in like or similar manner to pay all State taxes that may be required of the holders of its obligations, the corporation must then pay tax on every bond that is within the power of the State, no matter whether its treasurer has been able to ascertain the residence of the holder thereof, or not. Com. *v.* Northern Cen. R'y Co., C. P. Dau. Co., 631 Com. Dokt., 1896.

In this decision the court says:

"As we regard it, this appeal raises only one question that needs consideration: Does the defendant fulfil its covenant to pay the tax on these bonds, by making diligent inquiry concerning the residence of the bondholders? We have recently decided that such inquiry is the duty of the treasurer, and that the corporation is only liable if he is in default; but the decision does not apply to a situation like this, where the corporation has expressly agreed to pay the tax upon its taxable obligations. As it seems to us, this agreement imposes the duty of paying the tax upon every bond that may be discovered to be taxable, whether the discovery be made by the corporation itself or by the Commonwealth. The defendant has undertaken not only to ascertain what bonds are taxable by the State of Pennsylvania, but also to pay the tax upon every bond that is within the power of the State. . . . Dili-

gence does not discharge its full contract obligation. . . . When bonds are shown to be taxable, there is no answer except payment."

(In preparing the above statement of the existing law, the writer has been largely guided by unreported decisions of the Court of Common Pleas of Dauphin County. Appeals have been taken in some of the cases in which these decisions were given, which have not yet been passed upon by the Supreme Court. It is, therefore, quite possible that the law may be materially modified when the Supreme Court has given its decisions in the cases referred to.)

Corporations are liable for the payment of tax on their bonds held by other corporations or individuals of this State, in trust for persons whose residence is unknown. Com. *v.* North Pa. R. R. Co., 129 Pa., 460; Com. *v.* Lehigh Valley R. R. Co., 129 Pa., 429; Com. *v.* D. L. & W. R. R., 129 Pa., 458.

The tax on loans is a tax on the creditors of a company, and not on the company itself. Com. *v.* Lehigh Val. R. R., 104 Pa., 89.

But if the receiver of a company neglect to collect the tax on its obligations, in the manner prescribed by law, the company is responsible for the same. Com. *v.* Wilkes-Barre & S. R. R. Co., 162 Pa., 614; Com. *v.* P. & R. C. & I. Co., 162 Pa., 623.

Corporations are taxable, not only on the obligations originally issued by them, but also on those which have been issued by others but assumed by them. Such assumption, however, must be complete. For example, if a company purchase a property covered by a pre-existing mortgage, the company must, in order to be held responsible for tax on the mortgage, wholly assume the mortgage debt, so that it would be liable for any difference between the price which the property might bring, on the foreclosure of the mortgage, and the amount of the mortgage debt, if any such difference existed. Otherwise the mortgage should be returned by the mortgagee to the local assessor for taxation. Com. *v.* Hillside Coal & Iron Co., 1 D. R., 742.

See, generally, as to the assumption of mortgages, Merriman *v.* Moore, 90 Pa., 78.

The Act of 1885, by fixing the first Monday of November as the date to which the report of loans should be made, would seem to contemplate that the tax-year for loans should end on that date; but the Supreme Court has held in Com. *v.* Lehigh R. R. Co., 129 Pa., 429, that the tax-year for loans is the calendar year, and therefore ends on December 31st of each year.

Corporate Loans Exempt from Taxation.

The following classes of corporate loans are not taxable:

1. Obligations held in their own right by corporations paying a tax on their capital stock; such obligations enter into the value of said capital stock. Proviso to Sec. 1, Act of June 8, 1893.

2. Obligations held by National banks. As to those held by State and savings banks, see opinion of Attorney-General in chapter on Bank Tax, *infra*.

3. Notes discounted or negotiated by banks, savings associations, or trust companies. See Sec. 1, Act June 8, 1891.

4. Obligations held by non-residents of Pennsylvania in their own right. See State Tax on Foreign Held Bonds, 15 Wall., 326.

5. Obligations held and owned by institutions of purely public charity.

6. Obligations held and owned by building and loan associations, given them by members of their association. If given by persons not members of the association holding them, they are taxable (for the taxation of the shares of matured stock of said associations, see *infra*).

7. Obligations on which no interest has been paid or earned during the tax-year, from which the tax could have been deducted.

All *other* obligations issued or assumed by private corporations are taxable under the provisions of the acts above quoted.

It should be noted that the obligations held by domestic corporations, which pay a capital stock tax, must be held in their own right, in order to be exempted from taxation. If held in trust, or as agent, attorney in fact, or in any other fiduciary capacity, for the use or benefit of another, such obligations are taxable, despite the fact that the companies holding them pay a capital stock tax.

Loans are taxable only for the portion of a tax-year during which they have been outstanding. Thus, if a company issue bonds on the first day of July, they will only be taxed for the six months of the tax-year during which they are outstanding, at the rate of four mills for the entire year.

The tax on loans being a tax on the money of the creditors of a company, invested in its obligations, and not on the company itself, it follows that manufacturing corporations are required, through their treasurers, to collect the tax on their obligations, in the same manner as other corporations.

Although the tax on corporate loans has been successfully collected for twelve years, many taxables persist in including in their returns of personal property, made to the local assessors, the "obligations of public or private corporations" held by them, in disobedience to the directions of the proviso to Section 2 of the Act of June 1, 1889, above quoted. This results in their being taxed twice on the same obligations; once through the collectors of the State tax on personal property, and once by the treasurer of the company issuing the obligations referred to, by deducting it from the interest paid thereon.

The only remedy that can be found in such a case is, to make application for exoneration to the proper board of county commissioners, before they have made their return of the personal prop-

erty in their county subject to taxation, to the Board of Revenue Commissioners at Harrisburg. This return is usually made early in July of each year. Before it is made, the county commissioners can grant exoneration to the taxable, without any loss to the county or any one else. After the return of the county commissioners has been made to the Board of Revenue Commissioners, however, the exoneration can only be granted at the expense of the county, as the full amount of tax is required from the county on all the personal property returned by its commissioners as taxable.

The payment to the county authorities cannot be accepted by the State in lieu of the lawful payment through the treasurer of the corporations issuing the obligations, by deducting the tax from the interest paid on them, because, under the provisions of the Act of 1891, three-fourths of the State tax on personal property is returned to the counties collecting it. If, therefore, parties were allowed to pay the tax on the obligations of private or public corporations held and owned by them, to the local authorities, instead of permitting the tax thereon to be collected by being deducted from the interest paid them on such obligations, by the treasurers of the companies issuing them, the State would lose just three-fourths of the tax, while it is entitled to the whole amount thereof.

This being the case, it must be distinctly understood that if taxables include the obligations of public or private corporations in their returns made to the local assessors, this will not relieve them from the payment of the tax on the same obligations in the lawful manner, viz., by having the tax deducted from the interest paid them thereon; and, unless they can obtain exoneration from the proper county commissioners, they will thus be taxed twice on the same obligations.

Treasurers of corporations should also take notice that the fact that the holders of any of their obligations have returned the same to the local assessors with their other personal property, will not relieve such treasurers from the duty of collecting the tax on the same obligations in the manner prescribed by law, viz., by deducting it from the interest paid thereon.

Where no interest is paid, however, on corporate obligations, and the taxable knows, when making his return of personal property to the local assessor, that no interest has or will be paid thereon during the tax-year for which he makes his said return, he should, in that case *only*, include in such return of personal property the said obligations of private corporations, at their actual value, on which no interest has or will be paid. If there is, however, any doubt upon the question, he should not so return them.

Decisions. Following are a number of decisions of the courts bearing upon different questions involved in the assessment and collection of the tax on corporate loans:

Upon payment of interest for a portion of the year only, the

tax will be apportioned. Com. *v.* P. & R. R. R. Co., 150 Pa., 313.

When a corporation buys lands covered by mortgages, which it does not undertake to pay, but only pays the interest on the mortgage to protect its lands, the mortgages are not obligations of the corporation, but are taxable in the hands of the holders thereof. Com. *v.* Hillside Coal & Iron Co., 1 D. R., 742.

Corporations are liable to collect tax upon their bonds held by other corporations, or individuals of this State, in trust for persons whose residence is unknown. Com. *v.* Lehigh Valley R. R. Co., 129 Pa., 429. Although originally issued by foreign corporations doing business in this State, and sold to non-residents. Com. *v.* N. Y., L. E. & W. R. R. Co., 150 Pa., 234.

When a non-resident testator gives the income of bonds of a Pennsylvania corporation to a trustee resident in Pennsylvania, for the benefit of a non-resident of Pennsylvania, the corporation has a right to retain the tax from the interest paid thereon, although the securities were kept outside of the State. Guthrie *v.* Pitts., Cin. & St. L. R. R. Co., 158 Pa., 433.

The tax on corporate bonds or loans imposed by the Act of June 30, 1885, is not a tax laid on the company, nor on the bondholders as a body, but on each resident bondholder, as an individual. Com. *v.* P. & R. R. R. Co., 150 Pa., 312. The corporation or its treasurer is merely the agent or instrument of collection, for the convenience of the State. *Ibid.* A solvent corporation, it seems, may not pay its interest in stock or scrip or other equivalent of money, and therefore escape the payment of the tax, but an insolvent one may. *Ibid.*

A company in the hands of a receiver is liable to the Commonwealth for the tax on loans provided by the Act of 1885, the interest on which is paid by the receiver. It is the duty of the treasurer of a company in the hands of a receiver to assess the State tax on its indebtedness, and the duty of the receiver to pay it. In case of failure to perform this, the company is liable. Com. *v.* Phila. & Reading Coal and Iron Co., 26 W. N. C., 455.

Reports and Assessments. Blanks upon which to make reports of corporate loans are sent to the treasurers of all corporations subject to the tax, by the Auditor-General, about the first of November of each year. As already above stated, the tax-year for the loan tax does not expire, under the decisions of the courts, until December 31st in each year. The tax-year for capital stock, however, ends on the first Monday of November in each year, and as capital stock report blanks have to be sent out at or near that time, and as all domestic companies subject to the capital stock tax (except limited partnership and joint-stock associations) also pay the tax on loans, it is more convenient to send the loan tax blanks with, and at the same time as, the capital stock report blanks.

Reports of loans must be made by a company, for each year, whether it has any loans outstanding for such year or not. If it has none, the treasurer thereof should so report, under oath, on the blank, it being as necessary that the records of the Auditor-General's Department should show why a company is *not* taxed on loans for a given year as that it should appear therefrom why it *is* taxed for another year.

The fourth section of the Act of June 30, 1885, provides, as we have seen, that the treasurer of every private corporation shall "assess the tax . . . upon the nominal value of each and every said evidence of debt." That is, he is to determine the value thereof, and in so doing he shall determine such value to be the nominal value of the same; which is an odd kind of "assessment." The provision was inserted in the act, however, to meet the objections of the Supreme Court to the loan tax provisions of the previous Acts of 1879 and 1881, referred to at the beginning of this chapter. In fact, all that the treasurer of a company has to do is to return the obligations of his company, giving the face value thereof, instead of the actual value.

Upon the return of the reports to the Auditor-General's Department, settlements are made on the basis thereof, and copies of the settlements are mailed to the treasurers of the companies so reporting. A company can appeal from such settlement at any time within sixty days after the receipt of the copy of the settlement. Failing to do this within said time, the settlement becomes final. Payment of the tax is not demanded until the said sixty days have expired.

Before paying any interest on the outstanding obligations of a corporation its treasurer should classify such obligations in the following manner:

1. All held by non-residents of Pennsylvania.
2. Those held by corporations of Pennsylvania, *in their own right*, which pay a capital stock tax.
3. Those held by National banks. As to those held by State banks and savings institutions, see opinion of the Attorney-General of Pennsylvania, *infra*, in chapter on Bank Tax.
4. Notes discounted or negotiated by banks, savings institutions, or trust companies.
5. Those held by "institutions of purely public charity." Whether or not a given institution *is* an institution of purely public charity is not always easy of ascertainment.
6. Obligations held by building and loan associations of which the company issuing the obligations is a member. If the said company is not a member of such institution, the obligations held by it are taxable.
7. Obligations held by corporations, banks, or individuals, in trust for others, or in any fiduciary capacity.
8. Those held by individual residents of Pennsylvania.

9. Those held by persons whose residences cannot be ascertained after a careful and rigorous search.

Having made this classification, the treasurer of such corporation should deduct from the interest paid on the obligations enumerated in Numbers 7 and 8, and from those included in the exceptions to the other numbers, the tax of four mills on the dollar of the nominal, or face, value of such obligations.* From the interest paid on the other obligations he will deduct nothing. This tax, so collected, can be paid immediately to the State Treasurer, but the better way is to hold it until the company has made its reports of loans, and has received a copy of the settlement for tax made thereon, when the tax should be remitted to the State Treasurer, although the company may delay until sixty days from the receipt of said copy before remitting the tax.

In making the report of a company on its loans, the treasurer will find the classification above mentioned enable him to fill out the blank sent him, with little difficulty. Where there are any unusual circumstances relating to a given loan, it is well to add a note to the report, fully setting forth these peculiarities.

In remitting the tax on loans, treasurers should not neglect to deduct their commissions for collecting the same, which is, as already stated under the head of "County and Municipal Loans," five per cent. on the first thousand dollars of tax, one per cent. on the second thousand dollars of tax, and one-half of one per cent. on all tax in excess of two thousand dollars; thus the commission on a tax of two thousand five hundred dollars would be fifty dollars plus ten dollars, plus five dollars, or sixty-five dollars. They will find this commission already deducted for them, from the gross tax, in the copy of settlement sent them.

The tax on corporate loans being identical in character with the State tax on personal property, but collected in a different way, it follows that many of the decisions relative to the liability to taxation of various kinds of personal property, referred to under the head of the State Tax on Personal Property, *infra*, are applicable to said tax on corporate loans.

* See opinion of the Attorney-General, in chapter on Bank Tax, as to deducting tax from interest paid on corporate obligations held and owned by State banks, and savings banks or institutions with capital stock.

CHAPTER V.

TAX ON GROSS RECEIPTS.

ALL transportation and transmission companies of every description are subject to a tax of eight mills on the dollar of their gross receipts derived from passengers and freight traffic transported wholly within the State, and from telegraph, telephone, and express business done wholly within the State, and all electric light companies are subject to a like tax upon their gross receipts derived "from business of electric light companies."

History. This tax was first imposed by Act of February 23, 1866 (P. L., p. 82), which laid a tax of three-fourths of one per centum upon the gross receipts of "every railroad, canal, and transportation company." The Act of July 19, 1866, Sec. 2 (P. L., 1867, p. 1363), limited the application of the tax to companies which did not pay a tax on their net earnings, and the Act of May 1, 1868 (P. L., p. 108), further limited the companies subject to the tax to those "liable to the tax on tonnage." The tax was abolished by Sec. 3, Act of March 21, 1873 (P. L., p. 46), and Section 11, Act of April 24, 1874 (P. L., p. 68). It was, however, revived by Section 5 of the Act of March 20, 1877 (P. L., p. 6), which changed the rate to eight mills on the dollar, limited the receipts taxable to those derived from "tolls and transportation, telegraph business or express business," and included among corporations subject to the tax, express, telegraph, palace and sleeping car companies, and other transportation companies not enumerated in previous acts. The Act of June 7, 1879, Sec. 7 (P. L., p. 112), substantially re-enacted Sec. 5 of the Act of 1877. The act now in force, that of June 1, 1889, Section 23 (P. L., p. 420), is as follows:

"Section 23. That every *railroad company, pipe-line company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, street passenger railway company,* and *every other company,* joint-stock association, or limited partnership, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other State or by the United States or any foreign government, and *doing business* in this Commonwealth, and *owning, operating, or leasing* to or from another corporation, company, association, joint-stock association, or limited partnership, any *railroad, pipe line, slack water navigation, street passenger railway, canal,* or *other device* for the *transpor-*

tation of *freight* or *passengers* or *oil*, and every *telephone* or *telegraph company incorporated* under the laws of this or any other State or of the United States and doing business in this Commonwealth, and every *express company*, incorporated or unincorporated, *doing business in this Commonwealth*, and *every firm*, *copartnership*, or *joint-stock company* or *association doing express business* in this Commonwealth, and every *electric light company* and *every palace car and sleeping car company*, incorporated or unincorporated, doing business in this Commonwealth, shall pay to the State Treasurer a tax of *eight mills* upon the dollar upon the *gross receipts* of said corporation, company or association, limited partnership, firm or copartnership, received *from passengers* and *freight traffic transported wholly within this State*, and from *telegraph*, *telephone*, or *express business* done wholly within this State, or from business of electric light companies, and from the transportation of oil done wholly within the State; the said tax shall be paid *semi-annually* upon the last days of *January* and *July in each year;* and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of the said company, firm, copartnership, limited partnership, joint-stock association, or corporation, to transmit to the Auditor-General a statement, under oath or affirmation, of the amount of gross receipts of the said companies, copartnerships, corporations, joint-stock associations, or limited partnerships derived from all sources, and of gross receipts from business done wholly within the State, during the preceding six months ending on the first days of January and July in each year; and if any such company, firm, copartnership, joint-stock association, association, or limited partnership or corporation shall neglect or refuse, for a *period of thirty days after such tax becomes due*, to make said returns or to pay the same, the amount thereof, with an addition of ten per centum thereto, shall be collected for the use of the Commonwealth as other taxes are recoverable by law; Provided, that in any case where the works of one corporation, company, joint-stock association, or limited partnership are leased to and operated by another corporation, company, association, or limited partnership, the taxes imposed by this section shall be apportioned between the said corporations, companies, associations, or limited partnerships in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the Commonwealth shall first look to the corporation, company, association, or limited parnership operating the works, and upon payment by the said company, corporation, association, or limited partnership of a tax upon the receipts as herein provided derived from the operation thereof, the corporation, company, joint-stock association, or limited partnership from which the said works are leased, shall not be held liable under this section for any tax upon the proportion of said receipts received by it as rental for the use of said works."

What the Tax Is. It is probable that the tax is a franchise tax, measured by the amounts of the gross receipts of the companies subject thereto.

The Supreme Court of the United States, in Phila. & Read. R. R. Co., 15 Wall., 284, intimates that this may be the case, and similar taxes in other States have been directly ruled to be franchise taxes, notably in Maryland, where it was held in State *v.* Phila., etc., R. R. Co., 48 Md., 49, that a similar tax was not upon property, but "a tax upon the franchise of the corporation, measured by its business." What is the tax on gross receipts but a tax on the income, derived from certain sources, of the corporations subject to it? "Income is not property, but the *fruit of property*, and an income tax is not a tax on property." Waring *v.* Savannah, 60 Ga., 93. It is proper to say, however, that some decisions in this State, involving the question of the taxation of gross receipts derived from interstate commerce, seem to regard the tax as if it were upon property. If it be a tax on property it certainly constitutes double taxation, since the capital stock of a corporation, which, as we have seen, represents its property, assets, and the value of its franchise, is already taxed, and the gross receipts of the company, which, as the Supreme Court say in Phila. & Reading R. R. Company *v.* Com., *supra*, are not taxed until they have been incorporated "in the general mass of the company's property," certainly enter into the value of that capital stock; and double taxation cannot be imposed except by express legislation. If the tax be considered as a franchise tax, we escape the conclusion to which the other contention necessarily leads.

The tax was first laid on the business of electric light companies by the Act of June 1, 1889, having been limited in its application in previous acts to transportation and transmission companies only. What constitutes the "business of an electric light company" has never been judicially determined. The Auditor-General's Department has taxed receipts of an electric light company derived from work done in wiring houses, for the accommodation of customers, but as no appeal has ever been taken in such a case, it yet remains to be determined whether all the receipts which an electric light company can possibly have, under any circumstances, are properly taxable, or only those receipts which arise from the usual business of an electric light company.

Decisions Relative to the Tax. The tax on gross receipts, as imposed by the earlier acts, was declared constitutional in the case of State tax on gross receipts, 15 Wall., 284. After the reenactment of the tax in 1877, the constitutional right of the State to tax so much of the gross receipts of transportation and transmission companies as was derived from interstate commerce, became the subject of litigation, and it was held in the case of Com. *v.* Phila. & Southern S. S. Co., 122 U. S., 326, that such receipts could not be taxed, reversing the Supreme Court of this State.

The act now in force was prepared with an especial view toward making the same in conformity with the interstate commerce clause of the Constitution of the United States, and the decisions construing the same.

Foreign corporations are taxable, equally with domestic companies, upon their gross receipts derived from transportation done wholly within the State. Otherwise as to receipts derived from transportation between points without and points within the State. Com. *v.* Del. & Hud. Canal Co., 21 W. N. C., 406.

But receipts derived from the transportation of goods or passengers from one point in Pennsylvania, through another State, to another point in Pennsylvania, are taxable. Com. *v.* Lehigh Valley R. R. Co., 129 Pa., 308; Com. *v.* N. Y., L. E. & W. R. R. Co., 21 W. N. C., 410.

Telegraph companies are liable to tax only on gross receipts derived from messages transmitted wholly within the State. Western U. Tel. Co. *v.* Pa., 128 U. S., 39.

Express companies employing railroad and other companies to do their transportation are not entitled to exemption on the amount of their receipts paid for such services, even though the payments enter into the amounts upon which the other companies have paid tax, for they do not operate them under lease. Com. *v.* Express Co., 157 Pa., 579.

"Moneys received by a railroad company for the use of its track by the trains of another company, in common with its own trains, computed at the rate of so much for each ton of freight and for each passenger carried, are not rents, or receipts from passengers and freight traffic, but receipts for tolls.

"Such tolls are not included within the gross receipts taxable under the twenty-third section of the Act of June 1, 1889, imposing a tax upon the gross receipts 'from passengers and freight traffic transported within the State' of every railroad company owning, operating, or leasing any railroad.

"Construed in the light of preceding legislation, and of the fact that the well-defined word 'tolls' appearing in prior taxing statutes was omitted from the Act of 1889, the words employed in that act apply only to receipts for carriage done by the company taxed, or by a company operating its works under a lease." Com. *v.* R. R. Co., 145 Pa., 200.

(It may be well to state here that there are a number of State decisions upon the subject of the tax on gross receipts derived from interstate commerce, which have all been reversed by 122 U. S., 326. The number of a United States Supreme Court Report does not, of course, indicate whether the decisions therein have been rendered before or subsequent to the decisions printed in a given State report. This note may, therefore, save the student no little trouble in attempting to reconcile decisions which have, in fact, been overruled.)

What Receipts are Not Taxable. Receipts derived from the transportation of United States mails are not taxable. Com. *v.* Del., Lack. & W. R. R. Co., 21 W. N. C., 412.

Neither are receipts from tolls (the word "tolls" contained in former acts relative to the gross receipts tax having been omitted from the Act of 1889). Com. *v.* R. R. Co., 45 Pa., 200; Com. *v.* R. R. Co., 145 Pa., 38. See *supra*.

It will be observed that the gross receipts taxable are limited by the act heretofore quoted to those "received from passengers and freight traffic . . . and from telegraph, telephone, or express business . . . or from business of electric light companies."

The receipts derived from the rentals of a railroad company cannot, therefore, be taxed.

Companies in Hands of Receivers. The fact that a company is in the hands of a receiver appointed by a United States Court does not relieve it from the tax, although assessed in the name of the corporation alone. Phila. & Reading Railway Co., 104 Pa., 80; 13 W. N. C., 478.

The gross receipts of a ferry company operating between two States cannot be taxed by State authorities. Gloucester Ferry Co. *v.* Com., 114 U. S., 218.

Reports. Blanks upon which to make reports of gross receipts are sent semi-annually to the treasurers of the corporations subject to the tax, on or about the 30th of June and the 31st of December in each year. The reports are required to be made and filed within thirty days from said June 30th and December 31st, respectively. The act requires that the tax shall be paid semi-annually upon the last days of January and July in each year, and if the report is not made "for a period of thirty days after such tax becomes due"—that is, within thirty days from the last days of July and January, in each year, respectively—"the amount thereof, with an addition of ten per cent. thereto, shall be collected for the use of the Commonwealth as other taxes are recoverable by law."

According to the foregoing, a corporation need not make its report until thirty days after the tax becomes due. The reports are to be made for the periods ending June 30th and December 31st, respectively; the tax is due on the last days of July and January, respectively, and no penalty for neglect to report can be imposed until September 1st and March 1st. The practice is, however, to require the reports to be made by July 30th and January 31st in each year, and not to require payment of the tax until settlements therefor have been made, and the usual period for taking an appeal has expired.

In default of reports, estimated settlements, with fifty per centum penalty, can be made under the Act of March 30, 1811.

Companies whose roads, lines, or works are leased to and operated by other companies will, nevertheless, continue to make regu-

lar semi-annual reports, which should set forth substantially as follows:

"The A. B. Company has leased its road (lines or works) to the C. D. Company for the term of years, and its gross receipts for the six months ended are included in the gross receipts of the said C. D. Company, as set forth in its report of gross receipts for the said period."

Such reports show why no tax is settled against the company for the period for which it is leased, and indicate to the accounting officers the continuance of the lease, as well as show when it terminates.

Pullman's Palace Car Company and Similar Corporations. Numerous inquiries have been received by State officers from the officers of other States, as well as from private citizens, inquiring the method by which Pullman's Palace Car Company is taxed in this State. It would appear as though it had been found a matter of difficulty in other States to tax this and similar companies without violating in some manner the interstate commerce provision of the Constitution of the United States.

It may be said here, though the subject does not come wholly within the province of this chapter, that the said company and similar corporations are taxed under our general laws, as required by the State Constitution, and not by special laws, as is the case in many States. The proportion of the capital stock of Pullman's Palace Car Company subject to the tax on capital stock in Pennsylvania is ascertained in the following manner:

"The mode which the State of Pennsylvania adopted to ascertain the proportion of the company's property upon which it should be taxed in that State was, by taking as a basis of assessment such proportion of the capital stock of the company as the number of miles over which it ran cars within the State bore to the whole number of miles, in that and other States, over which its cars were run. This was a just and equitable method of assessment; and, if it were adopted by all the States through which these cars run, the company would be assessed upon the whole value of its capital stock, and no more." Pullman's P. Car Co. *v.* Penna., 141 Pa., 18. The court therefore sustained this method of taxing the capital stock of the company. See also Com. *v.* P. P. C. Co., 13 Pa. C. C., 54.

The gross receipts of the said company are taxed as follows: the company reports all the moneys received for transportation between places in Pennsylvania and other places in the same State. It returns separately, or in different schedules, the receipts of this nature earned by cars running wholly within the State, and, in another schedule such receipts as are earned by cars whose trips are not confined to the State, but are continued beyond the borders of Pennsylvania, or, beginning without the State, pass through or terminate in it. The tax on gross receipts, however, is settled

upon the full amount of receipts, earned wholly in Pennsylvania, so returned, whether earned by cars running only within the State, or by those engaged in interstate commerce. So long as the traffic is carried on entirely within the State, it makes no difference whether the cars earning the receipts are engaged in interstate commerce or run only within the State. The fact that a car runs between States does not make so much of the traffic carried on by it as is limited to the territory of a given State, interstate traffic.

The above method of taxing this company has appeared to work very equitably, and, having been adjudicated, may now be considered as firmly and finally established, so long as there is no change in our tax system.

CHAPTER VI.

TAX ON BANK STOCK.

EVERY bank or savings institution, having capital stock, in the Commonwealth of Pennsylvania, incorporated under the laws of said State (or of the United States, and located in Pennsylvania), must make a sworn report in writing to the Auditor-General, under the oath of one of its sworn officers, on or before the twentieth day of June in each year, which report shall state:

(*a*) The full number of shares of capital stock subscribed for or issued by such bank or savings institution, and

(*b*) The actual value thereof; and the actual value of the shares shall be ascertained by adding together the amount of

(*a*) Capital stock paid in, and

(*b*) The surplus and undivided profits, and dividing the amount by the number of shares.

The Auditor General then assesses tax on said shares at the rate of four mills on the dollar of their actual value, ascertained as above, and transmits a copy of the assessment or settlement to one of the officers of the bank. It is then the duty of such officers to post the settlement in a conspicuous place in their bank or savings institution, so as to give notice to the stockholders of such valuation and settlement. The bank or savings institution may then, within forty days from receipt of copy of settlement, either collect the tax from its shareholders, or pay it out of the general fund.

Any bank or savings institution subject to the tax may, however, elect to collect annually from its shareholders a tax of four mills on the dollar of the actual value of all its shares of capital stock (computed as above stated), and pay the same into the State Treasury on or before March 1st in each year, and may thus secure the exemption from *local* taxation of its shares and so much of its capital and profits as may not be invested in real estate; and such bank will not then be required to make any return to the local assessors of its personal property owned in its own right for purposes of taxation, and shall not be required to pay any tax thereon.

Any such bank or savings institution may elect, in lieu of the method hereinbefore set forth for ascertaining the value of its shares, to collect annually from its stockholders a tax of ten mills upon the *par value* of all its shares, which have been subscribed

for or issued, and pay the same into the State Treasury before the first day of March in each year, and in such case the shares of such bank or savings institution and so much of its profits and capital as shall not be invested in real estate shall be exempt from *local* taxation under the laws of this Commonwealth.

History. Banks were the first class of corporations selected for taxation in this Commonwealth, and since the passage of the Act of May 21, 1814, the method of taxing bank dividends, and, finally, the stock of banks, has been completely revolutionized several times. No other State tax in existence has been so modified and complicated by different enactments. Other taxes have been modified, but the whole system of bank taxation has been completely revolutionized again and again, as will appear from the following.

The first act imposing a tax upon banks as a separate object of taxation is that of May 21, 1814 (P. L., p. 169), which required the officers of all banks, on the first Monday of November in each year, to transmit six per cent. of the whole amount of the dividends which shall have been declared on said date and during the year preceding, to the State Treasurer, for the use of the Commonwealth, "and, if the said banks shall, at any time, be exempted from the payment of tax or duty to the United States, then and during such exemption, an additional sum of two per cent. on the dividends of each bank shall be transmitted, as aforesaid, to the State Treasurer for the use of the Commonwealth." This act was, primarily, for the incorporation and regulation of banks. Of this act Mr. T. K. Worthington, in his *Historical Sketch of the Finances of Pennsylvania,* says that it was passed for the purpose of restraining existing abuses rather than to increase the revenue.

The Act of April 1, 1835 (P. L., p. 99), provides that the several banks in this Commonwealth now subject by law to the payment of a tax on their dividends shall hereafter pay into the Treasury of this Commonwealth, in the manner now directed by law, eight per cent. on all dividends which do not exceed six per cent. per annum; nine per cent. on all dividends exceeding six and not exceeding seven per cent. per annum; ten per cent. on all dividends exceeding seven and not exceeding eight per cent., and eleven per cent. on all dividends exceeding eight per cent. per annum.

Banks were also made subject to the capital stock tax imposed by the Acts of June 11, 1840 (P. L., p. 612), and April 29, 1844 (P. L., 486). The tax on capital stock was *in addition to* the tax on dividends imposed by the Act of 1835, as is apparent from the sixth Section of the Act of April 16, 1845 (P. L., 507), which provides that the thirty-third Section of the Act of 1844 (which imposes the tax on capital stock) shall not be construed to release the banks and savings institutions of this Commonwealth from the payment of a tax on their dividends, respectively, according to the

provisions of the several laws in force at the time of the passage of said act.

The Act of March 15, 1849 (P. L., p. 168), amends the Act of 1835, imposing a tax on dividends, by increasing the rate per cent. to be paid on the amount of dividends declared.

The Act of April 12, 1859 (P. L., p. 529), includes banks and savings institutions among the institutions made subject to the payment of the tax on capital stock thereby.

The Act of March 24, 1860 (P. L., p. 250), provides that the said Act of 1859 "shall not be so construed that banks of deposit or savings banks shall be liable to the tax upon dividends," from which it would appear that from this date such banks became subject to taxation for State purposes upon their capital stock alone, and at the same rate as other corporations.

The Act of February 23, 1866 (P. L., p. 82), exempted banks from all other taxation on their capital stock (*not* on their shares), and, in lieu thereof, imposed a tax of one per centum upon the par value of the stock, the cashier of each bank to collect the tax annually from each stockholder, and pay the same into the State Treasury on or before the first of July in each year, beginning on July 1, 1866. This was practically re-enacted by the first section of the Act of July 19, 1866 (P. L., 1867, p. 1363).

"It was not until after the passage of the Act of February 23, 1866 (P. L., p. 82), that banks ceased to be the principal corporations subject to the tax on capital stock." Com. *v.* N. Y. P. & O. R. R. Co., 691 Com. Docket, Dau. C. P., 1896.

The Act of April 12, 1867 (P. L., 74), provides for the taxation of the *shares of stock* of National banks, repeals so much of the Act of February 23, 1866, as applies to the taxation of the *capital stock* of National banks, and is the first act providing for the taxation of National banks solely, *eo nomine*. The first section provides:

"That all the shares of stock held by any person in any bank incorporated by or in pursuance of any law of the Government of the United States are hereby declared subject to taxation in the hands of the holders of such shares, at the same rate as the shares, or stock, of banks incorporated by, or under, any law of the Commonwealth of Pennsylvania, are now taxable, in the hands of the individual holders of such shares, and at no other, or greater, rate; that is to say, a tax of three mills upon every dollar of the value of such shares or stock shall annually be assessed and collected in the manner hereinafter provided."

The second section provides that the Auditor-General and State Treasurer may appoint a suitable number of citizens who shall visit all the banks incorporated by the United States and obtain from the officers thereof complete lists of their shareholders, with their residence, and number and par value of shares of stock held by each, whereupon each assessor shall assess all the stockholders

in the district for which he is appointed, and make a list of the same, which he shall return to the commissioners of the city or county in which each bank shall be located, and the tax shall then be collected in the manner in which other tax on personal property is collected. The assessors were also required to make lists of the stockholders of the banks within their districts, *which stockholders resided in other districts*, with their residences and the number of shares held by each, and forward said lists to the Auditor-General, who, in turn, was required to notify the commissioners of the counties in which said stockholders were resident, respectively, and the tax was then to be collected as in the case of other personal property. Said assessors were to be appointed annually in the month of January.

The fifth section of the Act of 1867 provided that should any bank, National or State, pay to the State Treasurer a tax of one per cent. per annum on the par value of its capital stock, the shareholders of the bank should be exempt from all other taxation on the value of said shares.

The Act of April 2, 1868 (P. L., p. 55), somewhat modifies the manner in which the assessors, provided for in the Act of 1867, shall appraise the shares of National banks.

The Act of December 22, 1869 (P. L., 1870, p. 1373), provided that the shares of stock of State and savings banks should be subject to the same tax, assessed and collected in the same manner, as was imposed upon the shares of stock of National banks by the Acts of April 12, 1867, and April 2, 1868. Section 3 of said act also gives the same right to pay a tax of one per cent. on the par value of all their shares, and thus obtain exemption from all other taxation on the said shares, capital, and profits, as was granted to National banks by said Acts of 1867 and 1868.

The Act of March 31, 1870 (P. L., 42), provides for the refunding of all taxes collected on the shares of banks which may have paid the tax of one per cent. on the par value of all their shares of stock. It also provides that National banks shall be taxable for county, school, municipal, and local purposes, at the same rate as other moneyed capital in the hands of citizens of the State.

Section 6 of the Act of June 10, 1881 (P. L., p. 99), abolishes the system of assessment created by the Act of 1867, and provides for taxation upon the basis of reports made to the Auditor-General. Banks, State or National, electing to collect a tax of six-tenths of one per centum upon the par value of all the shares of said banks, and paying the same into the State Treasury before March 1st of each year, are exempt from further taxation upon their shares and so much of their capital and profits as is not invested in real estate.

When said banks do not elect to pay said six-mill tax, it is then made the duty of the president or cashier of every bank (State or National) to make a report in writing to the Auditor-General, on

or before June 20th, stating amount of capital stock, amount paid in, a list of the shareholders, with their residences, and the number and par value of the shares held by each, and the value of said stock in the market where such bank is located, during the year ending with June 20th; and a duplicate of such report shall be sent to the commissioners of the city or county in which said bank is located. The Auditor-General may inquire into the value of the stock, and abate or increase the assessment, as may be just. He then settles an account in the usual manner against the individual shareholders for the State tax, and transmits the lists and assessments made by him to the commissioners of the proper cities and counties, to be used by them in assessing taxes against the said shareholders.

The Act of 1881 was substantially re-enacted by the Act of June 30, 1885 (P. L., p. 193), save that trust, safe deposit, guarantee, surety, and real estate insurance or trust companies were included with banks, in the option given to elect to pay the six-mill tax on the par value of their shares, in lieu of other taxation upon their stock. This option was taken away from such companies by the Act of 1889.

The Act of June 1, 1889, Sections 24 and 25 (P. L., 420), was substantially re-enacted by Sections 6 and 7, of the Act of June 8, 1891 (P. L., p. 239). These sections of the latter act provide that State banks, National banks, and savings institutions may elect to pay, and pay, at any time before the first day of March in each year, a tax of eight mills on the dollar of the par value of their capital stock, and such payment relieves their shares and so much of the capital and profits of said banks as shall not be invested in real estate from "local" taxation. If they do not elect to pay said eight-mill tax, they are then subject to a tax of four mills on the dollar of the actual value of their capital stock during the year ending with the twentieth of June, and the shares of stock of State and savings banks are subject to a further tax of four mills on the dollar of the actual value thereof, in the hands of the holders. National banks are subject only to the four-mill tax on the actual value of their shares.

The system of bank taxation established by the Act of 1881, and amended by the Acts of 1885, 1889, and 1891, was so long in operation and has been so recently superseded that the full text of the Act of June 8, 1891, upon this subject, is given below, followed by a few decisions relating to that system of bank taxation:

Taxation of State Banks and Savings Institutions (Obsolete):

"Section 6. In case any *bank or savings institution* incorporated by this State or the United States shall elect to collect annually from the shareholders thereof a tax of *eight mills* on the dollar upon the par value of *all shares* of said *bank or savings institution* that have been subscribed for or issued, and pay the same into the State Treasury on or before the first *day of March* in each year,

the *shares* and so much of the *capital* and profits of such bank *as shall not be invested in real estate* shall be exempt from *local taxation* under the laws of this Commonwealth. It shall be the duty of the president or cashier of every bank or savings institution incorporated by or under the laws of this Commonwealth, failing to pay in the eight-mill tax as aforesaid, to make report in writing to the Auditor-General, on or before the twentieth day of June of each year, stating specifically the amount of capital stock and the amount paid in, a full and complete list of shareholders of such bank or savings institution, with their residences, and number and par value of shares of stock held by each person respectively, and the value of said stock in the market where such bank or savings institution is located, during the year ending with the twentieth day of June, which said report shall be verified by the oath of the president or cashier, taken before some officer authorized to administer oaths; and the said president or cashier shall also furnish a duplicate original of said report to the commissioners or board of revision of the proper city or county in which said bank or savings institution is located, to be used by them for the purpose of assessing all taxes against said shareholders. The Auditor-General shall have power to inquire into the value of such stock and either abate or increase the assessment as may be just; if the said bank officers shall neglect or refuse to furnish the reports aforesaid as above required, it shall be the duty of the Auditor-General to require the said officers to appear before him in person, with the books and accounts of the said bank or savings institution, for interrogation and examination, and the Auditor-General shall have power to issue subpœnas and attachments to be served by any constable or sheriff, and to compel the attendance of such officers and the production of such books and papers as he may deem necessary to make a correct list of the shareholders with their residences and the number and value of their shares; and the said Auditor-General shall settle an account in the usual mode against the individual shareholders for the State tax of four mills, and proceed to collect the same according to law, and he shall also transmit the list and assessments made by him to the commissioners or board of revision of the proper cities and counties to be used by them in assessing taxes against the shareholders; and any president or cashier of any bank or savings institution neglecting or refusing to furnish the said report, or to do and perform any of the matters and things required of him by this act, shall be liable to a penalty of one thousand dollars; and any bank or savings institution refusing to permit the said president or cashier to make the said reports, or to produce its books as above required, shall be liable to a like penalty of one thousand dollars; and the Auditor-General may settle an account against the president and cashier so neglecting or refusing to make report as aforesaid or against the bank or savings institution refusing to permit the making of said report or

the production of its books and papers as aforesaid, and proceed for the collection of said penalties for the use of the Commonwealth, in the same manner as taxes are now recoverable by law.

Taxation of National Banks (Obsolete):

"Section 7. That, from and after the passage of this act, every *National bank* located within this Commonwealth which shall fail to elect to collect annually from the shareholders thereof a tax of *eight mills* on the dollar upon the par value of all the shares of said bank that have been subscribed or issued, shall, *on or before the twentieth day of June* in each and every year, make to the Auditor-General a report in writing, verified by the oath or affirmation of the president or cashier, setting forth the full number of shares of the capital stock issued by such National bank, and the actual value thereof, whereupon it shall be the duty of the Auditor-General to assess the same for taxation at the same rate as that imposed upon other moneyed capital in the hands of individual citizens of this State; that is to say, at the *rate of four mills* upon each dollar of the actual value thereof, and for that purpose he shall have the power, and it shall be his duty, in case he shall not be satisfied with the correctness of the report, to summon the officers of said National bank to appear before him upon notice so to do, on a day to be fixed by him, and to bring with them all the books of the said National bank, showing its business, assets, and dividends, for his examination, and it shall be his further duty to hear any stockholder who may desire to be heard on the question of the valuation of the shares as aforesaid; and he shall have the right, by other evidence, to satisfy himself as to the correctness of the valuation of said shares of stock in said report contained, and to correct said valuation. The Auditor-General shall thereupon transmit to the said National banks a statement of the valuation and assessment so made by him, and the amount of tax due the Commonwealth on all of said shares, which tax the said banks shall, within thirty days after receiving said statement, collect from their shareholders and pay over into the State Treasury; Provided, that if any National bank shall fail or refuse to make said report or to pay said tax at the said times herein specified, or shall make any false statement in said report, or shall fail or refuse by its officers to appear before the Auditor-General upon notice as aforesaid, or shall fail or refuse to produce its books for examination when required to do so, the Auditor-General, after having ascertained the actual value of each share of the capital stock of said National bank, from the best information which he can obtain, shall add thereto fifty per centum, assess the taxes as aforesaid, and proceed according to law to collectt he same from said bank."

The optional tax was constitutional. Com. *v.* Merchants' Nat. Bank, 168 Pa., 309. See, also, Boyer's Appeal, 103 Pa., 387. Also Lack. County *v.* First National Bank, 94 Pa., 221. Truby's Appeal, 96 Pa., 52. Gorly *v.* Bowlby, 8 Pa. C. C., 17.

Act Now in Force. The Act of July 15, 1897 (P. L., p. 292), which is now in force, provides as follows:

"Section 1. *Be it enacted, etc.*, That from and after the passage of this act every bank or savings institution having capital stock, incorporated by or under any law of this Commonwealth, or under any law of the United States, and located within this Commonwealth, shall, on or before the twentieth day of June in each and every year, make to the Auditor-General a report in writing, verified by the oath or affirmation of the president, cashier, or treasurer, setting forth the full number of shares of the capital stock subscribed for or issued by such bank or savings institution, and the actual value thereof, which shall be ascertained as hereinafter provided; whereupon it shall be the duty of the Auditor-General to assess such shares for taxation at the same rate as that imposed upon other moneyed capital in the hands of individual citizens of the State; that is to say, at the rate of four mills upon each dollar of the actual value thereof, the actual value of each share of stock to be ascertained and fixed by adding together the amount of capital stock paid in, the surplus and undivided profits, and dividing this amount by the number of shares. The Auditor-General shall have the power, and it shall be his duty, in case he shall not be satisfied with the correctness of the report as made by the officers of any bank or savings institution, to summon the officers of said bank or savings institution to appear before him, upon notice to do so, on a day to be fixed by him, and to bring with them the books of said bank or savings institution for his examination; and he shall have the right to have further evidence to satisfy himself as to the correctness of the report made to him on the question of the value of the shares of stock of such bank or savings institution, according to the rule hereinbefore stated. After the Auditor-General shall have fixed the value of the shares of stock in any bank or savings institution by the method hereinbefore provided, and settled an account according to law, he shall thereupon transmit to the president, cashier, or treasurer of such bank or savings institution, a copy of such settlement, showing the valuation and assessment so made by him, and the amount of tax due the Commonwealth on all such shares. And it shall be the duty of the president, cashier, or treasurer of any such bank or savings institution, immediately upon the receipt of said settlement, to post the same in a conspicuous place in such bank or savings institution, so as to give notice to the shareholders of such valuation; and it shall be the duty of the Auditor-General to hear any shareholder upon the subject of the valuation of such shares of stock at the Auditor-General's office within a period of thirty days from the date of said settlement. It shall be the duty of every bank or savings institution, within a period of forty days after the date of such settlement by the Auditor-General, at its option, to pay the amount of said tax to the State Treasurer from its general

fund, or collect the same from its shareholders and pay over to the State Treasurer; Provided, that if any such bank or savings institution shall fail or refuse to make such report, or to pay such tax at the time herein specified, or shall make any false statement in such report, or shall fail or refuse by its officers to appear before the Auditor-General upon notice as aforesaid, or shall fail or refuse to produce its books for examination when required to do so by the Auditor-General, he shall, after having ascertained the actual value of each share of the capital stock of such bank or savings institution from the best information he can obtain, add thereto fifty per centum as a penalty, assess the tax as aforesaid, and proceed according to law to collect the same from such bank or savings institution; Provided further, that if the president, cashier, or treasurer of any such bank or savings institution shall neglect or refuse to post the copy of the settlement in a conspicuous place in such bank or savings institution immediately upon the receipt of the same, so as to give notice to the shareholders, such president, cashier, or treasurer shall be adjudged to be in default, and as a penalty for such default such bank or savings institution shall be responsible to the Commonwealth for the amount of the tax assessed against the shareholders of such bank or savings institution; And provided further, that in case any bank or savings institution having capital stock, incorporated under the law of this State or of the United States, shall collect annually from the shareholders thereof said tax of four mills on the dollar upon the actual value of all the shares of stock of said bank or savings institution, according to the rule hereinbefore stated, that have been subscribed for or issued, and pay the same into the State Treasury on or before the first day of March in each year, the shares and so much of the capital and profits of such bank or savings institution as shall not be invested in real estate shall be exempt from local taxation under the laws of this Commonwealth; and such bank or savings institution shall not be required to make any report to the local assessor or county commissioners of its personal property owned by it in its own right for purposes of taxation, and shall not be required to pay any tax thereon. Except, however, that any bank or savings institution incorporated as aforesaid, in lieu of the method hereinbefore set out for ascertaining the actual value of the shares of capital stock thereof, may elect to collect annually from the stockholders thereof a tax of ten mills on the dollar upon the par value of all shares of said bank that have been subscribed for or issued, and pay the same into the State Treasury on or before the first day of March in each year; and the shares of such bank or savings institution, and so much of the capital and profits of such bank or savings institution as shall not be invested in real estate, shall be exempted from local taxation under the laws of this Commonwealth."

Discussion of the Present System. It will be observed that

the Act of 1897 revolutionizes the system of bank taxation. In the first place, it abolishes all distinctions between State and National banks; it also does away with the system of two rates of taxation (as there are but two or three banks in the State, if so many, which can profitably elect to pay the ten-mill tax on the par value of their stock, as therein provided for). Banks will no longer have it at their option either to pay on the actual value of their shares, or on the par value, according to which method may seem the most advantageous. A fixed and equitable plan of arriving at the actual value of the shares for taxation is provided, which will result in a greater equality of taxation than has hitherto been possible.

Taxation of Shares of Stock in the Hands of the Holders. The Act of 1897 provides that, if a bank or savings institution subject to the tax shall collect and pay the four-mill tax on the actual value of its shares, etc., and pay the same to the State Treasurer on or before the first day of March in each year,

"The shares, and so much of the capital and profits of such bank or savings institution as shall not be invested in real estate, shall be exempt from *local taxation* under the laws of this Commonwealth."

But it was held by the Supreme Court in the case of Wilkes-Barre Deposit and Savings Bank, 148 Pa., 601, that the words "local taxation" do not refer to the tax on personal property, which is a tax for State purposes, and hence nothing appears in the Act of 1897 which relieves the shares of stock of State banks and savings institutions, in the hands of their holders, from the State tax on personal property, whether the tax is paid on or before March 1 or not. (The shares of stock of National banks cannot be taxed in the hands of the holders. See Boyer *v.* Boyer, 113 U. S., 689.)

It may, however, be argued that the Act of 1897 wholly abandons the old system, under which there were two subjects of taxation—the capital stock of the bank or savings institution, representing the property, assets, and franchises of the bank or institution, as a whole, which was subject to be taxed directly to the bank, and the shares of stock, which were considered as personal property, and taxable in the hands of the holders thereof, like other taxable personal property.

The Act of 1897 seems to have dropped the first of these two subjects, and to have considered the shares of stock as all that is taxable. As the tax on these shares is ordinarily to be collected from the shareholders, or at least to be paid for them by the bank, it may not unreasonably be held that this tax *is* the State tax on personal property, only collected in another manner, and that the holders of such shares are not, therefore, required to subject the shares to further taxation by the return thereof to the local assessor. This, however, has to be inferred, as the act does not state so spe-

cifically, and litigation will doubtless be necessary to determine whether the inference is correct. At any rate, nothing specifically relieves the shares of stock of banks from liability to the State tax on personal property in the hands of the holders thereof, in the said Act of 1897.

Taxation of the Personal Property of Banks. The said first section of the Act of 1897 further provides:

"And such bank or savings institution (*a*) shall not be required to make any report to the local assessor or county commissioners of its personal property owned by it in its own right, for purposes of taxation, and (*b*) shall not be required to pay any tax thereon" if the bank or savings institution shall collect the tax and pay it on or before March 1st, as above provided.

This certainly exempts the personal property held by a bank in its own right from the State tax on personal property. Whether it also relieves a bank from the tax on corporate loans, which is a branch of the personal property tax, but collected in another manner, may be questioned. That is, will the treasurer of a corporation, when paying interest on the obligations of his company, deduct the tax on corporate loans from the interest paid a bank holding any of such obligations in its own right? The bank is relieved from returning the personal property held by it in its own right to the local assessor, but the act does not go on to say, "nor shall the treasurer of any corporation, the obligations of which are held by a bank or savings institution in its own right, deduct from the interest paid on such obligations, so held, the State tax on corporate loans." It may be argued that this failure to specifically prohibit the collection of such tax leaves the bonds, etc., held by a bank in its own right, still taxable, and the Attorney-General so holds, as appears from his opinion upon this subject which will be found at the end of this chapter.

Banks which do not collect and pay the tax on or before March 1st of each year, and banks electing to pay the ten-mill tax, are unquestionably subject to taxation on the personal property held by them, except in the case of National banks, which cannot be taxed, under the National Banking Laws, except upon their shares.

See Gorly *v.* Bowlby, 8 Pa. C. C., 17.

Capital Stock of Banks Invested in United States Bonds. "The shareholders of a bank may be taxed by the States on shares so held by them, although all the capital of the bank be invested in Federal securities." Bank of Louisville *v.* Com. of Kentucky, 9 Wall., 353.

It seems, however, that the capital stock itself, when so invested in United States bonds, cannot be taxed. See Van Allen *v.* Assessor, 3 Wall., 573.

Shares of National Banks Located in Other States. The shares of National banks located in other States, owned by residents of this State, are not taxable in Pennsylvania. Tappan *v.* Merchants' National Bank, 22 Wall., 490.

General Rule as to Taxation of National Bank Shares by States. The act of Congress which provides that the shares of stock of National banks shall not be taxed, by the States, at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of said States, cannot be construed so as to permit of taxation at the same rate as other moneyed capital *similarly invested*, only. "If by this language it is meant that an illegal discrimination against capital invested in National bank shares cannot exist where no higher rate or heavier burden of taxation is imposed than upon capital invested in the State bank shares, or in State savings institutions, we have to say that such is not a proper construction of the act of Congress. Capital invested in National bank shares was intended to be placed upon the same footing of substantial equality in respect of taxation by State authority as the State establishes for other moneyed capital in the hands of individual citizens, *however invested*, whether in State bank shares or otherwise." Boyer *v.* Boyer (U. S. Supreme Court), 16 W. N. C., p. 1.

Reports and Settlements. The Act of 1897 provides for but one report to be made, and that is to be submitted on or before the twentieth day of June of each year. It does not state for what period the report is to be made; but it will be assumed that the report is to be made for the year ending on that date, viz., June 20th. There is no provision for the making of any report at the time when banks, electing to do so, collect and pay the four-mill tax, viz., March 1st. When the old system of four- and eight-mill taxes was in force, banks electing to pay the eight-mill tax were required to file a report and election so to do on or before March 1st in each year—that is, at the same time they were required to pay the amount of the tax.

Construction of the Act of July 15, 1897, by the Attorney-General. The Act of 1897 being radically different from prior acts upon the subject of bank taxation, the Auditor-General requested the Attorney-General to give him an interpretation thereof, in compliance with which request the Attorney-General rendered the following opinion:

OFFICE OF THE ATTORNEY-GENERAL,
Harrisburg, Pa., Dec. 21, 1897.

HON. AMOS H. MYLIN, Auditor-General.

SIR: I have before me yours of December 6th, asking to be advised as follows:

1. Whether the treasurer of a domestic corporation shall deduct the State tax of four mills on the dollar of the nominal value of its obligations held by banks or savings institutions having capital stock and made taxable under the Act of June 22, 1897 (P. L., 292).

2. What reports are to be made to your department under Section 1 of said Act of June 22, 1897, when any such bank or savings institution elects to pay, before March 1st in any year, a tax of four mills on the actual value of its capital stock, subscribed for or issued; as well as when it elects to

pay a tax of ten mills before March 1st in any one year on the par value of all shares that have been subscribed for or issued?

The Act of Assembly above named is entitled "An Act to Provide Revenue by Taxation." It provides that "every bank or savings institution having capital stock, incorporated by or under any law of this Commonwealth, or any law of the United States, and located within this Commonwealth," shall, on or before June 20th in each year, make a report to the Auditor-General, which report shall set forth the full number of shares of the capital stock subscribed for or issued by such bank, and the actual value thereof. The act provides that this actual value shall be ascertained by adding together the amount of capital stock paid in, the surplus and undivided profits, and dividing this by the number of shares. Upon such return it is made the duty of the Auditor-General to assess such shares for taxation at the rate of four mills. The act further provides remedies and penalties for failure to make a return, or when an improper return is made, as well as for failure on the part of bank officials to perform certain duties prescribed by the act. After the settlement of the tax as aforesaid, any such bank or savings institution shall, within forty days, pay to the State Treasurer the amount of such tax from the general funds of the bank or savings institution, or collect it from shareholders and pay it over. A tax collected in this manner under the provisions of said act of Assembly is intended to fall due and to be paid on or about the first day of August in any one year. The act provides, however, that any bank or savings institution may pay taxes on or before the first day of March in each year, at the rate of four mills on the actual valuation, or such bank or savings institution may pay at the rate of ten mills on the par value of such stock, provided such payment be made on or before the first day of March.

The payment of a tax on or about the first day of August, under the provisions of the first section of said act of Assembly, gives no immunity to the bank whatever, while a payment by the second method exempts such bank or savings institution so far that "the shares, and so much of the capital and profits of such bank as shall not be invested in real estate, shall be exempt from local taxation; and such bank or savings institution shall not be required to make any report to the local assessor or county commissioners of its personal property owned by it in its own right for purposes of taxation, and shall not be required to pay any tax thereon." The payment in the manner last provided for by said act of Assembly exempts such bank to the extent that "the shares of such bank or savings institution, and so much of the capital and profits of such bank or savings institution as shall not be invested in real estate, shall be exempted from local taxation under the laws of this Commonwealth."

These words of exemption last quoted are in the exact language of a similar provision in the twenty-fifth section of the Act of June 1, 1889 (P. L., 239), which was passed upon by the court in the case of Wilkes-Barre, etc. *v.* City of Wilkes-Barre, reported in 148 P. S., 601, where it was held that, notwithstanding the payment by a savings bank of the tax of six mills on the dollar upon the par value of all the shares of its stock, under Section 25 of the Act of June 1, 1889, the city bonds held by it, and constituting part of its capital and profits, are taxable under Section 1 of said act.

There appears to be nothing in the language of Section 1 of the Act of June 22, 1897, providing for the second method of payment, that would excuse the treasurer of a corporation from deducting the State tax of four mills when paying to any bank or savings institution the interest on the obligations of such corporation.

The words "and such bank or savings institution shall not be required to make any report to the local assessor or county commissioners of its personal property owned by it in its own right for purposes of taxation, and shall not be required to pay any tax thereon," do not in any way repeal, nor are they in conflict with, the provisions of former acts of Assembly

providing that the taxable, in making a return for State purposes, shall not include the obligations of public or private corporations, the tax upon which shall be paid by the corporation itself. This provision in the Act of 1897 undoubtedly relates to local taxes and not to State taxes.

You are, therefore, advised:

1. That it shall be the duty of treasurers of domestic corporations to deduct the State tax of four mills on the dollar of the value of their obligations held by banks or savings institutions having capital stock, made taxable by the Act of June 22, 1897.

2. That in the event of any such bank or savings institution electing to make payment on or before March 1st in any year, such bank or savings institution shall be required to file in your department a return under oath, showing the number of shares and the actual value of its capital stock, subscribed for or issued; in which the actual value shall be ascertained in the method pointed out by said act. Should the bank or savings institution elect to pay at the rate of ten mills on the par value of such capital stock, it must, in that event, make a return under oath, showing the number and par value of all shares that have been subscribed for or issued. In either case a return must be filed, and such return must also be accompanied by an election on the part of the bank or the savings institution to avail itself of either of the privileges named in the act for paying the taxes on or before the first day of March.

Very respectfully,
WILBUR F. REEDER,
Deputy Attorney-General.

Reports (Continued). In conformity with this opinion, banks electing to collect and pay the tax provided for by the Act of 1897, on or before the first day of March, will be required, at the time of making such payment, to file a report, setting forth the full number of shares of the capital stock subscribed for or issued by each, the amount of surplus and undivided profits, and the amount of capital stock paid in; and an election to collect and pay the tax on or before said first day of March. Banks so reporting and paying tax will not be required to make the report required by the act to be made on or before the twentieth day of June in each year. Said banks will be exempt from the State tax on their bonds, mortgages, etc., held and owned by them in their own right, and will not return the same to the local assessors, but they will be taxed upon the obligations of domestic corporations, for profit, held and owned by them, which tax will be deducted from the interest paid on such obligations by the treasurers of the corporations issuing said obligations.

Banks *not* electing to collect and pay the tax on or before March 1st in each year, nor electing to pay the ten-mill tax referred to below, will make the report prescribed by the act, on or before June 20th; and such banks will be subject, not only to the tax provided by the act on their stock, but the bonds, mortgages, etc., held by them will be subject to the State tax on personal property, and to the tax on corporate loans.

Banks electing to collect and pay the ten-mill tax on the par value of their shares will also make a report, on or before March 1st in each year, electing to make such payment, and giving the

authorized amount of their capital stock, number of shares, par value of each share, and aggregate par value of all shares. The payment of the ten-mill tax will not relieve the said banks from the State tax on personal property on the bonds, mortgages, etc., held by them, as we have already seen that such tax is not "local taxation." Their said obligations will also be subject to the tax on corporate loans.

Banks Subject to Municipal Licenses. The payment of bank tax, under the Act of 1897, either on or before the first day of March, or afterward, will not relieve banks paying the same from the payment of any municipal license fee to which they would otherwise be subject. See Oil City *v.* Trust Co., 151 Pa.. 458.

CHAPTER VII.

TAX ON PREMIUMS OF INSURANCE COMPANIES.

THIS subject is divided into two topics, as follows:

1. Tax on the premiums of foreign insurance companies.
2. Tax on the gross premiums of domestic insurance companies having capital stock.

1. Tax on Premiums of Foreign Insurance Companies.

Every insurance company of another State, or foreign government, in any manner whatever relating to risks, must make a report to the Commissioner of Insurance in the month of January in each year, under the oath of the president or secretary thereof, showing the entire amount of premiums of every character and description received by said company or association within this State, during the year or fraction of a year ending with the thirty-first day of December preceding, whether said premiums were received in money, or in the form of notes, credits, or other substitutes for money, and pay into the State Treasury a tax of three per centum upon said premiums. Act of April 4, 1873 (P. L., p. 26). The rate of tax was reduced from three to *two* per centum by proviso to Section 24 of the Act of June 1, 1889.

History. The Act of January 24, 1849 (P. L., 1850, p. 923), Section 5, *et seq.*, provides that the agents of all foreign insurance companies doing business in this State shall pay a license fee for the use of the Commonwealth, and (Section 8) that they shall keep accurate accounts of all moneys received by them by way of premium or deposit for iusurance or annuities, and make a return thereof to the Auditor-General, and retain in their hands, out of every dollar that they shall so receive, the sum of three cents, and, at the time of making return, as aforesaid, shall pay the said sum of three cents upon every dollar so received by them, to the proper county treasurer, for the use of the Commonwealth.

The Act of February 19, 1849 (P. L., p. 227), permits mutual insurance companies, incorporated under the laws of other States, to establish agencies in Pennsylvania, and provides regulations for the management of the same.

The Act of April 12, 1851 (P. L., p. 485), requires foreign insurance companies doing business in the State to make the same publication of statements of their condition as is required of domestic insurance companies.

The Act of April 9, 1856 (P. L., p. 284), provided that no foreign insurance company should do business in this State unless possessed of a *bona fide* capital of two hundred thousand dollars, safely invested. Such foreign insurance company desiring to do business in Pennsylvania was required to appoint an attorney resident in the State, on whom process might be served, and to file with the Auditor-General a certified copy of the resolution of the board of directors appointing such attorney. The president, vice-president, or secretary of such company was required, on the first Monday in January in each year, to file a certified copy of the charter of the company, and a statement of the condition of the company, giving a great amount of data specifically called for by said act.

Such foreign insurance company was also required, before doing any business in the State, to forward the statement referred to above to the Auditor-General, together with a written application for a license to do business in the Commonwealth, which license was required to be issued for the period of one year. Before receiving the license the foreign insurance company was required to pay:

For transacting business in Philadelphia	$200.00
" " " " Allegheny and Lancaster counties .	150.00
" " " " any other county	100.00

And the agent of the company was further required to retain in his hands, out of every dollar received by him for premiums, gross sums paid for annuities, and on all commissions for executing trusts, the sum of three cents, "which shall be paid to the Treasurer of the Commonwealth at the time of furnishing the annual statement required by this act."

The Act of May 12, 1857 (P. L., p. 458), extended the provisions of the Act of 1856 to foreign insurance companies organized on the mutual plan, but such mutual companies were, naturally, not required to file a certified copy of their charter, as provided in the Act of 1856.

The Act of April 11, 1868 (P. L., 83), repealed the Act of 1856 and its supplement of 1857, and also the following acts not above referred to:

Act of March 29, 1859; Act of May 1, 1861; Act of April 11, 1862; Act of August 25, 1864; Act of March 27, 1865; Act of March 1, 1866, and Act of March 28, 1867.

The said Act of 1868 provides that no foreign insurance company shall do business in the State unless it have cash assets, safely invested, of two hundred thousand dollars. The requirements as to appointment of an attorney, filing copy of charter, and making report to the Auditor-General, are very similar to those in the Act of 1856. The act further provides:

"That before any fire, marine, or life insurance company, trust or annuity company or association, or any health or casualty insur-

ance company shall receive from the Auditor-General such license as aforesaid, they shall pay to the Treasurer of the State, for the use of the Commonwealth, the sum of five hundred dollars, for the privilege of transacting business in this State for the full term of one year; . . . and companies incorporated for the insurance of horses, mules, cattle, and live stock, and companies incorporated for other purposes of insurance not mentioned in this act, shall pay the sum of two hundred dollars for annual license."

Section 7 of the same act further provides for the payment of "a sum equal to a tax of three per centum upon the entire amount of said premiums or commissions." The tax is deducted from the gross premiums and paid to the Auditor-General for the use of the Commonwealth, "and the license shall not be renewed until the tax is paid."

The Act of April 11, 1868, was repealed by the Act of April 4, 1873 (P. L., p. 26).

The said Act of April 4, 1873, established an Insurance Department, and relieved the Auditor-General from all duties formerly required of him in conuection with the taxation and licensing of foreign insurance companies. All duties connected with said companies were imposed, by said act, on the Insurance Commissioner, created by its provisions. The payment of any license fees for State purposes, either by the agents of foreign insurance companies, or by the companies themselves, was wholly done away with by said act.

Provision Now in Force. The premiums of foreign insurance companies are now taxed under the tenth section of the Act of April 4, 1873 (P. L., p. 26), which is as follows:

"No person shall act as agent or solicitor in this State of any insurance company of another State, or foreign government, in any manner whatever relating to risks, until the provisions of this act have been complied with on the part of the company or association, and there has been granted to said company or association, by the Commissioner [of Insurance], a certificate of authority showing that the company or association is authorized to transact business in the State; and it shall be the duty of every such company or association, authorized to transact business in this State, to make report to the Commissioner in the month of January in each year, under oath of the president or secretary thereof, showing the entire amount of premiums of every character and description received by said company or association in this State, during the year or fraction of a year ending with the thirty-first day of December preceding, whether said premiums were received in money, or in the form of notes, credits, or any other substitute for money, and pay into the State Treasury a tax of three per centum upon said premiums; and the Commissioner shall not have power to grant a renewal of the certificate of said company or association until the tax aforesaid is paid into the State Treasury."

The proviso to Section 24, Act June 1, 1889 (P. L., 420), provides:

"That hereafter the annual tax upon the premiums of insurance companies of other States or foreign governments shall be at the rate of two per centum upon the gross premiums of every character and description received from business done within this Commonwealth within the entire calendar year preceding."

How the Tax is Paid. The tax on the premiums of foreign insurance companies is paid directly to the Commissioner of Insurance. No settlement therefor is made by the accounting officers. The Insurance Commissioner ascertains whether the amount paid corresponds with the premiums reported, and, if so, pays the money into the State Treasury. There is no other manner of settling or adjusting the tax.

Constitutionality of the Tax. The tax on the premiums of foreign insurance companies is constitutional. Germania Life Ins. Co. *v.* Com., 85 Pa., 513; Ins. Co. of N. A. *v.* Com., 6 Norris, 173.

Payment to Cities and Boroughs of Part of Tax. Section 2 of the Act of June 28, 1895 (P. L., p. 410), provides:

"That there shall be paid by the State Treasurer to the treasurers of the several cities and boroughs of the Commonwealth one-half of the net amount received from the two per centum tax paid upon premiums by foreign *fire* insurance companies. The amount to be paid to each of the several treasurers of the several cities and boroughs shall be based upon the return of the said two per centum tax upon premiums received from foreign fire insurance companies doing business within the said cities and boroughs, as shown by the Insurance Commissioner's report. Warrants for the above purposes shall be drawn by the Auditor-General, payable to the treasurers of the several cities and boroughs, in accordance with this act, whenever there are sufficient funds in the State Treasury to pay the same."

This act does not state for what purpose the moneys so paid shall be used by the cities and boroughs receiving them. This omission is said to have resulted from the failure of certain proposed legislation connected with this subject, which would have made the purpose clear. There is no doubt, however, that it was the intention of the Legislature that the money should be used for the relief of disabled firemen, and most cities have recognized this intent by the disposition they have made of the shares received by them.

The Commissioner of Insurance makes a report to the Auditor-General of the amount received in premiums by each foreign fire insurance company doing business within the State, from insurance effected in each city and borough respectively. From these reports the Auditor-General opens accounts with the boroughs and cities, crediting them with the premiums reported as paid by the inhabitants thereof, by each foreign fire insurance company doing busi-

ness in the State. The tax is then computed and warrants for one-half the amount thereof are mailed to the treasurers of the respective cities and boroughs.

It has recently been held by the Supreme Court that the City of Philadelphia could properly entrust the expenditure of her share of this refund to the officers of the Firemen's Relief Association, an unofficial body existing in that city.

2. Tax on Gross Premiums of Domestic Insurance Companies Having Capital Stock.

All domestic insurance companies, except those doing business upon the purely mutual plan, without any capital stock or accumulated reserve, and except purely mutual beneficial associations, are subject to a State tax of eight mills upon the dollar of their gross premiums and assessments received from business transacted within this Commonwealth.

History. The tax on the gross premiums of domestic insurance companies was first imposed by the sixth section of the Act of March 20, 1877 (P. L., p. 6). This section required the payment of the tax on the "entire amount of premiums received by such company," as did also the eighth section of the Act of June 7, 1879 (P. L., p. 112). It was provided, however, by Section 7 of the Act of June 10, 1881 (P. L., p. 101), that:

"All insurance companies, which shall, within thirty days after the approval of this act, pay into the treasury of this Commonwealth the amount of money claimed by the Commonwealth for taxes upon gross premiums for the period of time between March 20, 1877, and the first day of January, 1881, together with interest upon the same, shall be liable, from and after the first day of January, 1881, during the continuance of this act, to no taxes upon their premiums, except upon such as were or shall be received from business transacted within this Commonwealth."

The Supreme Court had previously held that domestic corporations could be taxed, under the Act of 1877, on premiums received from business transacted without the State. Ins. Co. of N. Amer. *v.* Com., 87 Pa., 173; 6 W. N. C., 177.

The twenty-fourth section of the Act of June 1, 1889 (P. L., p. 420), following the Act of 1881, limited the premiums taxable to those "received from business transacted in this Commonwealth." The said twenty-fourth section of the Act of June 1, 1889, is still in force, and is as follows:

"Section 24. That hereafter it shall be the duty of the president, secretary, or other proper officer of *each and every insurance company or association* incorporated by or under any law of this Commonwealth, *except companies doing business upon the purely mutual plan without any capital stock* or *accumulated reserve*, and *purely mutual beneficial associations* whose funds for the benefit of mem-

bers, their families or heirs are made up entirely of the weekly or monthly contributions of their members and the accumulated interest thereon, to *make report* in writing to the Auditor-General semi-annually upon the *first days of July and January* in each year, setting forth the entire amount of premiums and assessments received by such company or association during the preceding six months, whether the said premiums and assessments were received in money or in the form of notes, credits, or any other substitutes for money; and every such company or association shall pay into the State Treasury semi-annually on the *last days of January and July*, in addition to any other taxes to which it may be liable under the first and under the twenty-first sections of this act, *a tax of eight mills* upon the dollar upon the gross amount of said premiums and assessments received from business transacted within this Commonwealth; Provided, that said report shall be made under oath or affirmation, and that it shall be the duty of the accounting officers of the Commonwealth to add *ten per centum* to the account of any company or association whose officers shall neglect or refuse for a period of thirty days to make the said report or to pay into the State Treasury the tax imposed by this section."

Decisions. When a mutual insurance company is authorized by a supplement to its charter to make insurance for cash premiums to non-members, it ceases to be "purely mutual," and becomes subject to the tax on gross premiums. Lycoming Fire Ins. Co. *v.* Com., 10 W. N. C., 228; 14 L. Bar., 9.

When a corporation at the time of its dissolution by decree of the court is a debtor to the State for tax on gross premiums, the debt continues to exist, and is a charge on the assets which passed into the hands of the receiver under the Act of 1876. Com. *v.* Amer. Life Ins. Co., 14 C. C., 216.

Such corporation is liable on the principle of apportionment only for the tax on the gross premiums received up to the time it is dissolved, and not for the full six months. *Id.*

Of course the payment by a domestic insurance company of tax on its capital stock does not relieve it from payment of the tax on its gross premiums, nor does the payment of the tax on its gross premiums relieve it from taxation upon its capital stock. The tax on gross premiums is a franchise tax, the amount of which is measured by the amount of gross premiums earned by it within the State. It does not, therefore, conflict with any property tax. The same is true, in principle, as to the tax on gross receipts.

Where mutual insurance companies accumulate a reserve, the amount of such reserve is subject to the tax on gross premiums. At least, the Auditor-General's Department so holds, and settlements for tax have recently been made in such cases.

Reports. Blanks upon which to make semi-annual reports for the periods ending June 30th and December 31st in each year, respectively, are sent by the Auditor-General to the companies liable

to the tax, about the dates named. The act requires that the tax shall be paid on the last days of July and January in each year. The provision as to the time within which reports for the above-named periods must be made is not definitely stated in the act, which provides that a penalty of ten per centum shall be added to the account of any company whose "officers shall neglect or refuse for a period of thirty days to make said report." Whether the said thirty days are to be reckoned from June 30th and December 31st, on which end, respectively, the periods for which the reports are to be made, or whether they are to be calculated from the last days of January and July, respectively, when the tax becomes due, is not clear. The practice is, however, to require the reports to be made on or before July 31st and January 31st, respectively, and not to require the payment of the tax until settlements have been made therefor, and copies have been served upon the companies against which the settlements are made, and the usual time for taking appeals has expired.

CHAPTER VIII.

TAX ON NET EARNINGS OR INCOME.

PRIVATE bankers and brokers, and unincorporated banks and savings institutions, and corporations not subject to a tax on their capital stock or gross premiums (except incorporated banks and savings institutions having capital stock, and foreign insurance companies) are subject to a tax of three per centum upon the amount of their net earnings or income.

History. This tax, so far as it relates to the taxation of *corporations*, was originated by Section 2 of the Act of April 30, 1864 (P. L., p. 218), which provided:

"That every incorporated or unincorporated banking and savings institution and deposit and trust company, every gas company, every express company, bridge company, insurance company, foreign insurance company, building and loan association, and manufacturing, mechanical, and mining and quarrying company, and all other companies and incorporations doing business in Pennsylvania, except those specified in the first section of this act, not paying a tax to the State on dividends [exceptions: all transportation companies] shall annually, on the first day of November of each year, make report to the Auditor-General . . . setting forth the amount of net earnings or income, received . . . during the preceding year, and upon such net earnings or income . . . shall pay . . . three per centum."

Section 6 of the Act of May 1, 1868 (P. L., p. 108), imposes the tax upon "every unincorporated bank and savings institution and express company, and all corporations except those liable to the tax on tonnage, and foreign insurance companies."

Section 2 of the Act of March 21, 1875 (P. L., p. 46) relieved from the payment of the tax all corporations subject to the payment of a tax upon their capital stock, and the Act of June 7, 1879 (P. L., p. 112), exempted from the payment thereof all corporations "liable to a tax on capital stock or gross receipts." The existing act, Section 27 of the Act of June 1, 1889 (P. L., p. 420), was intended to be a drag-net to cover such corporations as, owing to their peculiar nature, might not be comprehended among the classes of corporations subjected to taxation by the other sections of said act. This section is as follows:

"Section 27. That from and after the passage of this act *every incorporated company* or *limited partnership whatever*, whether the same be incorporated, formed or organized under the laws of this

or any other State or Territory, and *doing business* within this Commonwealth, and liable to taxation therein, *which is not subject to the taxes imposed by the twenty-first or twenty-fourth sections of this act, except incorporated banks and savings institutions having capital stock, and foreign insurance companies,* shall annually, upon the first Monday of November of each year, make report to the Auditor-General under oath of some officer of such company, association, or limited partnership, setting forth the entire amount of net earnings or income received by said company or limited partnership from all sources during the preceding year; and upon such net earnings or income, the said company, association, or limited partnership, as the case may be, *shall pay* into the State Treasury for the use of the Commonwealth, within sixty days thereafter, *three per centum* upon such annual *net earnings or income,* in addition to any taxes on personal property to which it may be subject under the first section of this act; and in case any company or limited partnership, as aforesaid, shall neglect or refuse to make the report required by this section to the Auditor-General, on or before the thirty-first day of December following, such company, association, or limited partnership shall be liable to a *penalty of ten per centum* for such neglect, which shall be added to the amount of tax found due on the settlement of their account; Provided, that this section *shall not apply* to corporations and limited partnerships chartered or organized for *manufacturing purposes.*"

Decisions. The net income of a corporation is liable to taxation, whether declared in dividends or not. Com. *v.* Ocean Oil Co., 59 Pa., 61.

A company claimed that it could have no net income until the capital stock invested in its business had been repaid. Held, that the income of the works, after deducting the expenses, was the net income to be taxed. *Id.*

A tax upon net earnings or income of trust companies which have no capital stock, holding bonds subject to the State tax on corporate loans, under Section 27 of the Act of June 1, 1889, is a tax on the franchises, and, therefore, not double taxation, although the net earnings or income were derived from the interest on bonds taxable under the Act of 1885. Com. *v.* N. Y., L. E. & W. R. R. Co., 150 Pa., 234.

The Auditor-General's Department has recently raised the question whether or not a savings institution, without capital stock, should be allowed, in the settlement of tax on its net earnings or income, to have the amount paid to depositors as interest deducted from the gross receipts in arriving at the net earnings. Settlement was made against the Philadelphia Savings Fund, for the year 1896, on its net earnings, in arriving at which net earnings the amount paid by the company for interest was not deducted from the gross earnings. The society took an appeal, and the matter is now pending in the Court of Common Pleas of Dauphin

County. In this case, as it is understood, the depositors in this society become, by the making of such deposits, members of the society, and entitled to all the benefits of membership. In such case the payment of interest is a benefit received by the members of the society themselves, and hence is in the nature of a distribution of earnings among them (the depositors who are also members) rather than a payment of interest. In other words, the same result would be effected if no interest were paid, and the net earnings of the company were finally distributed among the depositors (members). Hence the amount paid as interest is not an expense, and the same should not be permitted to be deducted from the gross earnings in arriving at the net earnings. It is fair to state, however, that the said Philadelphia Savings Fund denies, in its appeal, that its depositors *do* thus become members of the society or fund.

"The annual tax imposed by Section 10 of the Act of June 7, 1879, upon certain classes of corporations therein named is not laid upon the money and receipts of such corporations, but upon their franchises, the amount of the net earnings or income being resorted to simply as a just measure of the tax that should be paid for the enjoyment of the franchise.

"All corporations comiug within the provisions of the above act are thereby bound to pay annually to the Commonwealth a fixed per centum rate upon all their income, even though a part thereof may be derived from loans of the United States and from loans of the Commonwealth, which, by the acts authorizing the issue, are expressly made free from all State taxes.

"Such corporations are not entitled to deduct from the amount of income upon which tax is payable by them the difference between the amount expended several years before in the purchase of a security, and the par value at which the security has been redeemed within the current year. This canuot be properly regarded as a loss; even if it should be so, the capital is only decreased thereby, and this does not necessarily diminish the annual net earnings, which have alone been adopted as the measure of the tax imposed." Phila. Contributionship for Ins., etc. *v.* Commonwealth, 98 Pa., 48.

On Net Earnings or Income of Brokers and Private Bankers.

The tax on net earnings or income, so far as it relates to bankers and brokers, was originated by the Act of May 16, 1861 (P. L., p. 708), which provided that:

"Every stock broker, bill broker, exchange broker, real estate broker, and private banker in this Commonwealth shall . . . make a written return to the Auditor-General, . . . in which he shall . . . set forth the full amount of his receipts from commissions, discounts, abatements, allowances, and all other profits arising from his business, . . . and pay . . . .

three per cent. upon the aggregate amount contained in such return, for the use of the Commonwealth."

The Act of April 30, 1864 (P. L., p. 218), used the language "every private banker and broker," as did also the Act of May 1, 1868, and the same language is used in Section 10 of the Act of June 7, 1879 (P. L., p. 112).

The Act of June 27, 1895 (P. L., p. 396), without recurring to the Acts of 1864, 1868, and 1879, amended the original Act of 1861 only by omitting therefrom the words "real estate broker," the text of the said Act of 1895 being as follows:

"Section 1. That every *stock broker, bill broker, exchange broker,* and *private banker* in this Commonwealth shall, on or before the first Monday of December next, and on or before the same day in each year thereafter, make a written return, under oath or affirmation, to the Auditor-General of this Commonwealth, in which return he shall exhibit and set forth the full amount of *his receipts* from *commissions, discounts, abatements, allowances* and *all other profits arising from his business* during the year ending with the thirtieth day of November preceding the date of such annual return, and shall forthwith pay into the State Treasury *three per centum* upon the aggregate amount contained in such return for the use of the Commonwealth; all revenues derived from this source are hereby appropriated to the sinking fund, to be applied under the direction of the Commissioners thereof to the payment of the interest and reduction of the principal of the public debt, in like manner as other revenues appropriated to that fund are now applied."

This act, therefore, relieved real estate brokers from the payment of the tax on net earnings or income. The constitutionality of omitting this class of brokers from the list of those subject to the tax has been sustained in the case of Pittsburg *v.* Coyle, 165 Pa., 61.

As the law now stands, therefore, *corporations* are subject to the tax on net earnings under the provisions of the Act of June 1, 1889, Section 27, while *brokers* and *private bankers* are subject thereto under the provisions of the Act of June 27, 1895, as above.

It will be observed that the Act of 1861 and its amendment of 1895 impose the tax upon the *full amount of receipts* of brokers and private bankers, while the Act of 1889 imposes the tax only on the *net earnings* of the corporations subject to it. In other words, in one case the tax is on the gross, while in the other, it is upon the net, receipts. The Supreme Court, however, in the case of Drexel & Co. *v.* Commonwealth, 46 Pa., 31, held that the Act of May 16, 1861, "clearly intended to levy a tax of three per centum on the *profits or income of the business,* and was not meant to tax capital. Profits must necessarily be the net profits of the business. . . . It was, in fact, a tax upon the income of the business in which the defendants were engaged." Under this

decision, rendered in 1863, the practice always has been, therefore, to assess tax on the net, and not on the gross, earnings of private bankers and brokers. The passage of the Act of 1895, using the same language as that of the Act of 1861, evidently does not change matters, since, in using such language, the legislators must be assumed to have known what judicial construction had been placed on such words, and to have used them in the sense indicated by the decision referred to. Hence the tax is settled uniformly on the net earnings of both bankers and brokers and of corporations subject to the tax.

The tax on the net earnings or income of brokers is in addition to the license tax required to be paid by them. See under the head of Licenses, *infra*.

The various kinds of brokers subject to the tax on net earnings or income are required to register in the Department of the Auditor-General, giving the name of the broker, or, if a firm, the name of the firm, the location or place where such business is transacted, and the amount of capital invested therein, if any, by Section 2 of the Act of June 27, 1895. The third section of the same act provides a penalty of one thousand dollars for failure so to register. The registry must be filed within sixty days after beginning business.

Clerk hire of a partner or member of a firm, if made under contract and in good faith, will be allowed as an item of expense in the report of net earnings or income of the corporation or firm for whom such services were rendered. Com. *v.* Anthracite Savings Bank, No. 286, March T., 1886, Dauphin C. P.; unreported.

Under the Act of May 16, 1861, brokers and private bankers who fail to make return of the profits of their business, and also a report of their names, places of business, and capital employed, are liable to the penalty imposed by the third section, for each neglect, and not to a single penalty only, as for one offence. Com. *v.* Jay Cooke *et al.*, 50 Pa., 201.

Form of Report of Net Earnings or Income.

[D.—Form I.]

Stock, Bill, and Exchange Brokers and Private Bankers, and Incorporated and Unincorporated Banking and Savings Institutions without Capital Stock.

Report of the net earnings or income of (name of individual, firm, partnership, or company, No. and street, place) for the year ended the first Monday of November, 189 .

Return setting forth full amount of receipts from all sources received during said year, as follows:

Receipts.

1.	Commissions	$
2.	Discounts	
3.	Abatements	
4.	Allowances	
5.	Deposits	
6.	Loans, on call or otherwise	
7.	Investments	
	a. Stocks, etc.	
	b. Bonds, mortgages	
	c. Rents	
8.	All other sources not included in above	
	Total receipts	$

Expenses.

Deduct:

1.	Clerk hire	$
2.	Number of clerks ( )	
3.	Rent of office	$
4.	Interest paid to depositors only	
5.	Taxes (paid on the business)	
6.	Losses charged off upon the books during tax year	
7.	Nature and character of losses	
	Total expenses	$
	Net earnings	$
	Tax, 3 per cent.	

Signature,

Banks and Savings Institutions Paying Tax Exempt from Municipal Licenses. The payment of the tax on net earnings or income relieves unincorporated banks and savings institutions without capital stock from the payment of municipal license fees, in cities of the third class, and in other cities not expressly authorized to impose the payment of license fees thereon. Oil City *v.* Trust Co., 151 Pa., 459.

CHAPTER IX.

TAX ON THE MATURED STOCK OF BUILDING AND LOAN ASSOCIATIONS.

THE Act of June 22 1897 (P. L., p. 178), provides as follows:

"Section 1. *Be it enacted, etc.*, That upon all full-paid, prepaid, and fully matured or partly matured stock in any building and loan association incorporated under the laws of this State, or incorporated under the laws of any other State and doing business within this State, and upon which annual, semi-annual, quarterly, or monthly cash dividends or interest shall be paid, there shall be paid a State tax equal to that required to be paid upon money at interest by the general tax laws of this State; and such tax shall be deducted from the cash dividend or interest so provided for by the secretary or treasurer of such corporation, and be paid to the State Treasurer. And every such domestic corporation shall annually make return to the Auditor-Geueral, at the time other returns for taxation are required to be made, of the amount of its stock outstauding entitled to receive cash dividends or interest, and every such foreign corporation shall, in the reports required to be made by them to the Banking Department, make report of the amount of its stock, held by residents of this State, entitled to receive cash dividends or interest; and said Banking Department shall, at the time other returns for taxation are required to be made, certify to the Auditor-General the amount of such stock each of said foreign corporations had outstanding at the time of its last report to said Banking Department, and upon said sum such foreign corporation shall pay the tax above required to be paid to the State Treasurer, upon demand, and failure to make such payment within thirty days after such demand shall have been made shall subject such corporation to the forfeiture of its right to transact business in this State; Provided, however, that nothing in this act shall be taken to require the payment of any tax upon any unmatured stock of building and loan associations upon which periodical payments are required to be made, or upon any such stock after it has matured and is in process of payment.

"Section 2. All laws or parts of laws inconsistent herewith or supplied hereby are hereby repealed."

Building and loan associations have been exempted from taxation in Pennsylvania since the passage of the Act of May 22, 1883 (P. L., p. 83), which provides:

"That mutual loan and building associations shall be exempt from the provisions of each and every law imposing taxes for State purposes on their capital stock or mortgages, and other securities for moneys loaned to their own members, but the real estate owned by said associations shall be subject to the same rates of taxation as the real estate of other corporations and persons; Provided, however, that the right of the Commonwealth to collect taxes already accrued is hereby reserved."

The Act of 1897, therefore, repeals this act so far as it relates to the matured stocks of building and loan associations.

It will be observed that the Act of 1897 mentions not only "full-paid, prepaid, and fully matured" stock, but also "partly matured" stock; but this provision relative to partly matured stock seems to have been negatived by the last sentence of Section 1 (which sentence was an amendment to the original bill), which provides that "Nothing in this act shall be taken to require the payment of any tax upon any unmatured stock of building and loan associations upon which periodical payments are required to be made, or upon any such stock after it has matured and is in process of payment."

The time when domestic associations shall make their reports to the Auditor-General is fixed "at the time other returns for taxation are required to be made." Inasmuch as there are different periods for making reports for different kinds of taxes, this time is uncertain, but the Auditor-General's Department holds that, as the tax imposed is a tax "equal to that required to be paid upon money at interest"—*i. e.*, the tax on personal property, the tax-year for which is the calendar year, the reports of building and loan associations shall also be made for the calendar year, and be made as soon after the thirty-first day of December in each year as circumstances will permit.

Like the tax on express companies, this tax, being new, has never been passed upon by the courts, so that but little can now be said, with authority, upon the subject.

In the future all building and loan associations will be required to register in the Auditor-General's Department, like other corporations, under the provisions of the nineteenth section of the Act of June 1, 1889. The language of that section is broad enough to cover such associations; but as the associations were not hitherto subject to any State taxation, so that such registration would not, hitherto, have served any useful purpose, it has not, in the past, been customary to compel them to register under said section, although when they did so register the registries were filed and entered. In the future they will uniformly be required to register.

Following is the blank prepared by the Auditor-General's Department, on which building and loan associations will make the report required by the Act of June 22, 1897 :

[A.—Form 21.]

BUILDING AND LOAN ASSOCIATIONS (DOMESTIC).

Return or report of the Association of for the year 1897.

To the Auditor-General of Pennsylvania:

The above-named Association makes the following return or report, in pursuance of the Act of the General Assembly of Pennsylvania, entitled, "An Act Taxing Certain Stocks of Building and Loan Associations for State Purposes," approved the 22d day of June, A. D. 1897 (P. L., p. 178), which provides, *inter alia*, "That upon all full-paid, prepaid, fully matured . . . stock in any building and loan association incorporated under the laws of this State, or incorporated under the laws of any other State, and upon which annual, semi-annual, quarterly, or monthly cash dividends or interest shall be paid, there shall be paid a State tax equal to that required to be paid upon moneys at interest by the tax laws of the State, [to-wit, 4 mills] . . . Provided, however, that nothing in this act shall be taken to require the payment of any tax upon any unmatured stock . . . upon which periodical payments are required to be made or upon any such stock after it has matured and is in process of payment." (A copy of which act will be found upon page 4 of this blank.)

(To be executed by the Secretary or Treasurer.)

Office Place Date 189 .

President — Authorized capital stock, $
Secretary — Chartered (date)
Treasurer — Organized (date)

STATE OF PENNSYLVANIA } *ss.:*
County of }

On this day of A. D. 189 , before me, the subscriber, a notary public, in and for the county aforesaid, personally appeared treasurer (or secretary) of the said association, who, being duly according to law, says that the facts set forth in the following return or report are true.

Treasurer (or Secretary).

and subscribed before me, the day and year last aforesaid.

Notary Public.

RETURN.

1. Value of each share:

Full-paid stock	$
Prepaid stock	
Fully matured stock	

2. Total number of shares outstanding:

	Jan. 1, 1897.	Dec. 31, 1897.
Full-paid	—	—
Prepaid	—	—
Fully matured	—	—

3. Total number of shares, amounts, and dates of issue thereof, during the year 1897:

	No. of shares.	Amount.	Dates of issue.
Full-paid	—	—	—
Prepaid	—	—	—
Fully matured	—	—	—

4. Total number of shares paid, with dates of payment and amounts, during the year 1897:

	No. of shares.	Amount.	Dates of payment.
Full-paid	—	—	—
Prepaid	—	—	—
Fully matured	—	—	—

5. Amount of full-paid, prepaid, and fully matured stock upon which annual, semi-annual, quarterly, or monthly cash dividends or interest have been paid during the year 1897:

	No. of shares.	Rate.	Amount.	Date of payment of interest or dividend.
Full-paid . .	—	—	—	—
Prepaid . .	—	—	—	—
Fully matured .	—	—	—	—

6. Below give full explanations in regard to items in this report, in order that the department may be in possession of all the facts, so that no injustice may be done in taxing your association. In case spaces in the above form are not large enough to contain complete answers, then attach a separate sheet.

Instructions.

1. This report is to be made for the year ending the 31st day of December, 1897.
2. Pages 1 and 2 must be filled up, and verified by oath or affirmation.
3. Each question or interrogatory must be answered by inserting figures in their proper places, or the word "None;" otherwise report will not be accepted nor filed.
4. If spaces in this blank are not large enough to include all the data or figures required to be reported, attach a statement as part of the report.
5. This form is intended for the use of domestic associations only.
6. Each association must attach to and file with this report a copy of its constitution and by-laws.
7. Further instructions will accompany this blank.

Circular sent with the said Report Blank.

SIR: Enclosed herewith please find blank upon which to make report to this department, for purposes of taxation, of the full-paid, prepaid, and fully matured stock of your association, as required by the Act of June 22, 1897 (P. L., p. 178). Two copies of the blank are sent to you, so that you may make and retain a copy of your report on one of them, for future reference.

You will observe, from an examination of the act, which is printed upon the back of the blanks, that two methods of reporting are provided for therein, viz.:

1. Domestic building and loan associations are required to report directly to this department, while
2. Foreign building and loan associations, that is, those incorporated under the laws of other States or countries, are required to report to the banking department, which department afterward certifies the necessary data contained in such reports to the Auditor-General.

You will further observe that the proviso to the said act expressly relieves from taxation "any unmatured stock of building and loan associations upon which periodical payments are required to be made, or upon any such stock after it has matured and is in process of payment."

The true intent and meaning of this proviso is held by this department to be, that matured stocks, which are in process of being paid as rapidly as the means of the association will permit, or as quickly as the constitution and by-laws of such association will allow, are not taxable; but where such "process of payment" is unduly extended, the department will, in all cases, settle taxes on the stock the payment of which is improperly protracted. All amendments to the constitution and by-laws of a building and loan association, having the effect of prolonging the time within which matured stocks shall be paid, which amendments shall have been adopted subsequent to the passage of the said Act of June 22, 1897, will be critically examined by the department.

Reports of domestic building and loan associations, made pursuant to the requirements of said Act of 1897, should be made for the calendar year. Such associations will be given thirty days from and after the 31st day of December, in which to file their reports.

It is impossible for this department to foresee all the questions which may arise under this act, creating, as it does, a tax upon a new class of subjects, and hence it is impossible to give detailed instructions until it is known upon what points such instructions are necessary. It is requested, therefore, that you will, instead of writing the department as to how to fill up your report under certain circumstances, make out your said report to the best of your ability, adding, in the liberal space which you will find left in the blank for that purpose, all facts and matters which will throw light upon the condition of your association, and explain the circumstances under which the report is made.

On the return of the report to this office, properly executed, settlement will be made thereon, by the Auditor-General and State Teeasurer, after the usual manner of settling public accounts, and certified copies of such settlements will be mailed to the treasurer or secretary of your association.

CHAPTER X.

EXCISE TAX UPON EXPRESS COMPANIES.

THE Act of July 15, 1897 (P. L., p. 294), Section 3, provides for "an annual excise tax" upon all corporations, limited partnerships, joint-stock associations, partnerships, firms, or associations, or individuals, incorporated or unincorporated, engaged in "the business commonly known as express business." The said section provides as follows:

"Section 3. *Every corporation, limited partnership, joint-stock association, partnership, firm,* or *association,* or *individuals incorporated* or *unincorporated,* engaged in the business commonly known as *express business,* shall pay to the State Treasurer for the use of the State *an annual excise* tax for the privilege of exercising its franchises in this State. *The amount of said tax shall be ascertained as follows:* Each corporation, limited partnership, joint-stock association, partnership, firm, or association, or individuals, incorporated or unincorporated, subject to the provisions of this section, shall, on the *thirty-first day of December of each year,* or within thirty days thereafter, *return to the Auditor-General,* under oath, the *amount of its express receipts,* that is to say, the amount of the *total receipts* derived by it from carrying on the express business, *for the year* ending on that day, *together with a statement,* under oath, of the total length of the lines of rail and water routes over which it was doing business during said year. The gross express receipts, as so returned to the Auditor-General, shall be divided by the number of miles of lines of rail and water routes to ascertain the average gross receipts per mile. When such average receipts per mile shall not exceed one hundred dollars, the tax shall be equal to one per centum of the gross express receipts; when the average *receipts per mile exceed one hundred dollars per mile and do not exceed one hundred and fifty dollars,* the tax shall be equal to *two per centum* of the gross receipts, and so on, increasing the rate of the *tax one per centum for each additional fifty dollars* of average receipts per mile, or fraction thereof; Provided, the rate thereof *shall not exceed five per centum;* when the *route or routes* over which said express business is conducted lie *partly within* and *partly without* this State, the tax shall be equal to the same proportion of the gross express receipts as herein provided, said amount *to be determined as follows:* The *gross express receipts* over the *entire line* or system *within* and *without* the State shall be *divided by* the total *number of miles operated* to obtain the average

gross receipts per mile, and the gross express receipts in this State shall be taken to be the average gross express receipts per mile, multiplied by the number of miles operated within this State. *Said tax shall be due and payable* on or before the *first day of March* in each year. In case of failure to make such payment, or report as herein required, the Auditor-General shall add a *penalty of twenty-five per centum* to the amount of the tax found due."

This being not only a new tax, but a tax of a novel nature, but very little can now be said with reference thereto. It is evident that so far as it relates to incorporated companies engaged in the express business, it effects a double taxation upon their receipts, for such express companies are already, in common with all other transportation companies, subject to the State tax on gross receipts. It is attempted to evade this double taxation by denominating this an "excise" tax. An "excise" is defined by the lexicographers as "An inland duty or impost operating as an indirect tax on the consumer." It is not apparent, therefore, that the use of that word, adjectively, will be given much weight in the construction of this act. The fact is, that this tax, like that on gross receipts, is a franchise tax, the amount of which is measured, in each case, by the amount of total receipts. How deep a class of corporations can be plastered over with franchise taxes all measured upon the same basis, it is not for the writer to determine, but it would seem as though there must be a limit somewhere.

It will be observed that this act taxes not only corporations, limited partnerships, and joint-stock associations, but also firms and individuals, and yet the tax is to be paid "for the privilege of exercising its franchise in this State." What "franchise" an individual may be exercising in this State, if he chooses to go into the express business, is not very clear.

Persons or firms engaged in the business of delivering parcels or baggage in cities are sometimes referred to as engaged in "the express business." It is evident that this kind of express business is not taxable under this act, since the parties liable to the tax are to report receipts derived from carrying on the express business on "lines of rail and water routes;" but, doubtless, the receipts of a person who should, as the founder of Adams' Express Company is said to have done, make trips by rail or water, carrying small packages in a satchel, as desired, for pay, would be taxed by this act.

Whether, under the State Constitution, one class of transportation corporations can be singled out for the imposition of much heavier taxes than are imposed on other transportation companies (when there is no pretext of using the police powers of the State in so doing), is another question which remains to be determined.

Until this tax has been adjudicated, and rulings have been made under it by the accounting officers, nothing more can be here said. Following is the form of report for the payment of this tax prepared by the Auditor-General's Department.

[A.—Form 20.]

EXPRESS COMPANIES.

Return or report of for the year ending December 31, 189

To the Auditor-General of Pennsylvania:

The provisions of Section 3 of the Act entitled "An Act to provide revenue by taxation," approved the 15th pay of July, 1897, provides that every corporation, limited partnership, joint-stock association, partnership, firm, or association or individuals, incorporated or unincorporated, engaged in the business commonly known as "express business," shall pay to the State Treasurer for the use of the State an annual excise tax (a copy of which section will be found upon page 2 of this blank). In pursuance to that act the following return or report is made for the year above named:

Office of (please give name and address here), 189

Total gross receipts derived from carrying on its express business . . . . . $ ——

Statement.

Total length of line of rail route over which it did business during said year . . . . . ——
Total length of line of water route over which it did business during said year . . . . . ——
Total mileage . . . ——

Total mileage of route or routes in Pennsylvania . ——
Total mileage of route or routes outside of Pennsylvania
Average gross receipts per mile where route is wholly within Pennsylvania . . . . . $ ——
Average per mile where route or routes are partly within and partly without the State . . . . ——

(Name of officer.)

NOTE.—This tax is in addition to the tax upon capital stock, loans, and gross receipts imposed by prior acts of Assembly.

} *ss.*

On this day of A. D. 189 , personally appeared before me, a in and for the county aforesaid of the said , who, being duly according to law, did depose and say, that the foregoing report is true and correct.

Sworn (or affirmed) and subscribed before me the day and year aforesaid.
(*Justice of the Peace or Notary Public.*

(*Treasurer.*)

In leaving the subject of the taxation of corporations in Pennsylvania for State purposes, the following analysis of the manner in which different classes of property, held and owned by corporations, are taxed is given. No reference is made therein to the minor special taxes on different classes of corporations for State purposes, the object being merely to show how the property owned and held by the great majority of corporations in Pennsylvania is taxed.

How Corporate Property is Taxed in Pennsylvania.

Kind of Property.	*Local Taxation.**	*State Taxation.*
Bonds, mortgages, etc., owned by corporations paying a tax on capital stock, in their own right.	Not taxable.	Not taxable directly, but the capital stock invested therein is taxed at the rate of 5 mills on the dollar of its actual value.
—— held by corporations in trust, or in any fiduciary capacity.	Not taxable.	Taxable through the local assessors and county commissioners at the rate of 4 mills on each dollar of the nominal value thereof.
Gross premiums of domestic insurance companies with capital stock.	Not taxable.	Taxable at the rate of 8 mills on the dollar of such premiums received from business done in Pennsylvania.
Gross receipts of transportation, transmission, and electric light companies.	Not taxable.	Taxable at the rate of 8 mills on the dollar of receipts of transportation and transmission companies derived from traffic wholly within the State, and of receipts from the business of electric light companies.
Real estate	Taxable the same as that of individuals, except in the case of *public corporations* like railroad companies, the property of which, essential to the exercise of their franchises, is not taxable locally.	Not taxable directly, but the capital stock which is invested therein is taxable at the rate of 5 mills on the dollar of the actual value thereof.
Shares of stock of other corporations paying a tax on their capital stock.	Not taxable.	Not taxable, because the companies issuing such shares pay a tax on their capital stock, these shares only indicating what interest the company holding the shares has in that capital stock which has already paid tax.
Shares of stock of corporations *not* paying a capital stock tax.†	Not taxable.	Not taxable directly, but the capital stock invested in is taxed at the rate of 5 mills on the dollar of the actual value thereof.

From the foregoing it is apparent that, in taxing the capital stock of a company which, in itself, is a "mere myth," as Justice Paxson, of the Supreme Court, has truly said, in Fox's Appeal, 112 Pa., 337, the Commonwealth taxes all the property of a company and its assets (as well as its franchise), leaving the real estate held by it, subject to local taxation, like that of an individual, except in the cases of public corporations, like railroads, canals, etc. Corporations are thus treated like individuals, whose moneys at interest, etc., which may be said to constitute *their* "capital stock," are taxed for State purposes, while their real estate is liable only to local taxation. Railroad and other public corporations, being exempt from taxation, locally, on their real estate, bear the additional burden of a State tax on their gross receipts.

The shares of stock of corporations paying a tax upon their

* It will be remembered that, as we have already seen, the State tax on personal property is not "local taxation."

† The company referred to here as not paying a capital stock tax is the company *issuing* the shares of stock, *not* the company *holding* and owning them. The latter company is supposed to pay such tax.

capital stock are not taxed in the hands of the holders thereof, because such shares are not, in themselves, property. They only indicate what interest each holder thereof has in the property of the company issuing them, and that property, as a whole, is taxed through the capital stock, which represents it.

The property of corporations *not paying a capital stock tax* (except in the case of incorporated banks, and savings institutions with capital stock, for the method of taxing which, see chapter on Tax on Bank Stock) is taxable precisely like that of an individual, and such companies pay, further, a State tax of three per cent. on their net earnings.

CHAPTER XI.

ESCHEATS.

ESCHEATS may occur in the Commonwealth of Pennsylvania for the following reasons:

1. For want of heirs or known kindred.
2. By forfeiture upon attaint.
3. By alienation in mortmain.

1. Escheat for Want of Heirs or Known Kindred.

Estates escheated for want of heirs or known kindred are reduced to the possession of the Commonwealth under the provisions of the Act of May 2, 1889 (P. L., p. 66). Prior acts are as follows:

Act of September 29, 1787, 2 Smith's Laws, 425; March 27, 1821, 8 Smith's Laws, 267; April 6, 1833 (P. L., p. 167); April 26, 1855 (P. L., p. 531).

The Act of May 2, 1889 (P. L., p. 66), now in force, is as follows:

What estates shall escheat.

"Section 1. That from after the publication of this act, if any person, who at the time of his death was seized or possessed of any real or personal estate within this Commonwealth, has died or shall die intestate, without heirs or known kindred, a widow or surviving husband, such estate, of whatsoever kind the same may be, whether legal or equitable, or whether the same was held by the said person in severalty or as tenant in common, co-tenant, joint tenant, or in partnership with any other person or persons, shall escheat to the Commonwealth, subject to all legal demands on the same.

Property in custody of court.

"Section 2. That whensoever any money, estate, or effects shall have been, or shall hereafter be, paid into or deposited in the custody of any court of this Commonwealth, or shall be in the custody of any depository, or of any receiver or other officer of said court, and the rightful owner or owners thereof shall have been or shall be unknown for the space of seven years, the same shall escheat to the Commonwealth, subject to all legal demands on the same.

Or of trustee when the *cestui que trust* is unknown.

"Section 3. That whensoever any trustee or other person is or shall be seized of any property or estate, real or personal, in a fiduciary capacity, and shall file an account of the same in any court of this Common-

wealth, and whensoever it shall appear that the *cestui que trust* or beneficial owner of said property or effects, or any part thereof, has been unknown for a period of seven years, and still remains unknown, then and in such case, so much of said property or effects as belonged to said unknown *cestui que trust*, or beneficial owner, shall escheat to the Commonwealth, subject to all legal demands on the same.

Auditor-General to appoint an escheator.

"Section 4. That whensoever, by information or otherwise, the Auditor-General of the Commonwealth shall become aware of the fact that any property, real or personal, hath escheated or is supposed to have escheated to the Commonwealth under the provisions of this act, he shall appoint, by commission under his hand and the seal of his office, some suitable person, resident in the county where he shall have reason to suppose that the escheated property or the greater part thereof is situate, to act as escheator of said property; which said escheator shall have the powers and duties, and shall be entitled to the fees and rewards, hereafter nominated and specified in this act.

Jurisdiction.

"Section 5. That the jurisdiction in all cases of escheat, under the provisions of this act, shall be vested in the courts of this Commonwealth, as follows, namely:

Orphans' court of decedent's residence.

"Whenever an escheat shall occur or be supposed to occur by reason of any person dying intestate, without heirs or known kindred, a widow or surviving husband, the orphans' court of the county wherein said decedent was resident at the time of his death, or, in case said decedent was not at the time of his death resident within this Commonwealth, then the orphans' court of the county in which the greater part of his property, real and personal, shall be situate, shall have jurisdiction.

If a non-resident.

Or court in which trustee's account was filed.

"Whenever an escheat shall occur, or be supposed to occur, of any property, estate, or effects deposited in the custody of any court, or with any depository, receiver, or other officer thereof, the owner whereof shall be unknown, and whenever any escheat shall occur or be supposed to occur of any property, estate, or effects held by any trustee or other person in a fiduciary capacity, who shall have filed an account thereof in any court of this Commonwealth, by reason of the fact that the *cestui que trust* or beneficial owner thereof shall be unknown, then and in such case, the court in which, or in the custody of any depository, receiver, or other officer of which said property, estate, or effects may have been or shall be deposited, whether the same be real or personal, or

in which said account has been or may be duly filed, shall have jurisdiction.

Escheator to apply for letters of administration.

"Section 6. That whensoever any escheator shall be duly commissioned by the Auditor-General, of and concerning any property, real or personal, escheated or supposed to have escheated by reason of the fact that the person who was last seized or possessed of the same has died intestate, without heirs or known kindred, a widow or surviving husband, and no letters of administration have been granted upon the estate of the said decedent, it shall be the duty of the said escheator to apply to the register of wills of the county wherein the said decedent was resident at the time of his death, or in case the said decedent was at the time of his death (not) resident within this Commonwealth, then to the register of wills of the county in which the greater part of the property escheated or supposed to have escheated is or may be situate, for a grant of letters of administration to him, the said escheator, upon the estate of the said decedent.

Duty of register of wills.

And the said register of wills shall, if no next of kin or creditor of said decedent entitled under existing laws to letters of administration shall appear and demand such letters, forthwith grant the same to said escheator, in like manner and form as letters of administration are now granted by existing laws, and said escheator shall be entitled in such case to letters of administration, even though said decedent was not at the time of his death possessed of any personal property, but was seized of real estate only, situate within this Commonwealth.

Duties of escheator.

"Section 7. That whensoever any escheator shall be duly commissioned by the Auditor-General, of and concerning any property, real or personal, escheated or supposed to have escheated to the Commonwealth under the provisions of this act, he shall apply by petition to the court having jurisdiction in the premises, to hear and determine whether an escheat has occurred or not, and shall in his petition set forth the fact of his appointment, and the nature and character of the alleged escheat, and shall also state, as far as he conveniently can, the location, character, and amount of the property, real and personal, alleged to have escheated, together with the name and address of the person or persons having the same in his or their possession; whereupon the said court shall have power to issue a summons or citation, directed to any administrator or executor, depository of the court, receiver, or other officer of the court, to show cause, if any they have, why they should not file a true and accurate account of all and singular

Citation to custodian of property to file account.

the said property alleged to have escheated as aforesaid; and if, upon sufficient proof by oath or affirmation of the service of said summons or citation, no good and valid cause be shown to the contrary, the said court shall proceed to direct said administrator or executor, depository of the court, receiver, or other officer of the court, to file his said account. And in all cases where any real estate has escheated, or is supposed to have escheated, by reason of the death of the person last seized thereof without heirs or known kindred, the said court shall have power to order the executor or administrator of said person to file a true and accurate statement of all the real estate whereof said decedent died seized, describing the same by metes and bounds, together with the buildings and improvements thereon erected, as far as he has been able to ascertain the same. And whensoever it shall appear by the account of any executor or administrator, or any receiver or other officer of the court, or of any trustee, or other person in a fiduciary capacity, or upon the audit of any such account, that the said receiver or other officer, trustee, or other person has in his possession, or has any knowledge of the existence of any real estate which shall have escheated, or is supposed to have escheated, to the Commonwealth, the said court shall have power to order and direct the said administrator, or executor, receiver or other officer, trustee, or other person filing an account as aforesaid, to file a true and accurate statement of all said real estate, describing the same as aforesaid, so far as he has been or shall be able to ascertain the same; and any and all accounts and statements filed under the provisions of this act shall be verified by oath or affirmation in the customary manner.

Court may order an account.

May order a statement and description of real estate to be filed.

"Section 8. That whensoever any proceedings in escheat have been instituted as aforesaid, the court having jurisdiction in the premises shall upon the filing of any account or statement by any administrator, executor, depository of the court, receiver, or other officer of the court, or of any trustee or other person in a fiduciary capacity, or any property or estate, real or personal, escheated or supposed to be escheated, proceed to the audit and adjudication of said account or statement in the same manner as the said court commonly proceeds upon the audit and adjudication of the accounts of executors, administrators, and trustees; and shall, upon said audit, proceed to inquire and determine whether there has been any escheat or not, and if so, in what manner, and for what cause said escheat has

Court may audit such account or statement.

And determine question of escheat.

occurred, and also what estate, real or personal, has escheated, and what is the value thereof. And the said court shall, in all cases where any real estate has escheated, or is alleged to have escheated, before proceeding finally to hear and determine the question of escheat, order and direct notice of said proceedings to be served upon the person or persons in possession of said real estate, in such form as the court shall direct; and the said court shall have full power and authority to summon any person or persons who shall be at any time alleged to have any knowledge touching any escheat or any interest therein, to appear before it, and said court shall have full power and authority to examine any and all of said persons upon their oaths or affirmations, as to any fact or facts, matter or things touching said escheat, and shall suffer and permit the escheator and all parties claiming to have any interest in said proceedings, to appear therein by counsel or otherwise, and to produce and examine such witnesses, under oath or affirmation, as they may see fit, touching said escheat, and the said court shall have full power at any stage of said proceedings, when they may think it wise so to do, to make such orders relative to advertisements and notices of the proceedings, as shall best serve to inform and advise all parties having an interest, or who may have an interest in said proceedings, of the pendency thereof.

In cases of real estate.

Notice.

Hearing.

Notices of proceedings by advertisement.

An issue may be directed to the common pleas.

"Section 9. That whenever any proceedings in escheat shall have been instituted or shall be pending in any court of this Commonwealth, and there shall be any disputed fact or facts touching said escheat, then and in that case the said court shall, upon application of the escheator, or any other person interested or claiming to be interested in the said proceedings, prior to the filing of a finding or adjudication therein, frame an issue or issues to determine said disputed question or questions of facts; which said issue or issues shall be tried in the court of common pleas of the same county in which the proceedings in escheat shall have been instituted, and shall, if necessary, be certified to said court for that purpose. In cases where escheat proceedings are instituted in the Supreme Court, such issue or issues shall be certified to, and shall be tried by, the court of common pleas of such county as the Supreme Court shall designate. Any party to said issue may, upon the trial thereof, except to the ruling of the court upon any point of evidence or of law, which exception shall be noted by the court and filed of record in the cause; and

Exceptions may be taken.

a writ of error to the Supreme Court may thereupon be taken by any party to said issue, with the usual force and effect. And after the determination of such issue, the court of common pleas in which the same shall have been tried shall certify the result thereof to the court in which the said proceedings in escheat have been instituted. Writ of error. Result to be certified to orphans' court.

"Section 10. That every court having jurisdiction in cases of escheat shall, after the determination of each and every case, file of record a finding or adjudication which shall set forth: What the record to set forth.

"First. Whether an escheat hath occurred, or not.

"Second. In what manner and for what cause the said escheat hath occurred, with the full name of the intestate, if any there be, or of the person who was last seized or possessed of the property in question.

"Third. What estate, real or personal, hath escheated, and what is the value thereof.

"Fourth. Where said estate, real or personal, is situated, and in whose possession the same then is.

"And in case the said court shall find that any property, real or personal, hath escheated, the same shall be awarded to the escheator for and on behalf of the Commonwealth. Award.

"Section 11. That whensoever any adjudication or finding in escheat shall have been filed by any court, exceptions may be filed thereto by the escheator, or any other party or parties interested in said proceedings, within the same time and in the same manner as exceptions are commonly filed in cases of accounts of administrators, executors, and trustees, in the court having jurisdiction in the premises. And the court shall proceed to the hearing and determination of said exceptions, in the like manner as in the cases of exceptions to the accounts of administrators, executors, and trustees, as aforesaid, and if said exceptions are, after hearing, sustained in whole or in part, the court shall forthwith proceed to file an amended adjudication or finding, in accordance with its determination upon such exceptions. But if no such exceptions are filed within the time limited as aforesaid, then the adjudication or finding of escheat shall be deemed to be confirmed absolutely. Exceptions to findings. Court to hear and determine exceptions.

"Section 12. That the Commonwealth, or any person aggrieved or claiming to be aggrieved by a final adjudication or finding in escheat, may appeal from the same to the Supreme Court; Provided, that any party, other than the Commonwealth, so appealing, shall give Party aggrieved to appeal to Supreme Court. Proviso.

bond with sufficient security, to be approved by the court, conditioned to prosecute the appeal with effect, and to pay all costs that may be adjudged against him, and shall make oath or affirmation that the appeal is not intended for delay. No appeal shall be allowed unless the same shall be entered and security given within thirty days after the filing of the amended adjudication or finding, or the absolute confirmation of the original adjudication or finding by the court having jurisdiction in the premises. And in cases where said appeal shall be duly entered and security given within the time above limited, no further proceeding shall be had touching the said escheat, until the same be determined by the Supreme Court and the record be remitted therefrom.

Duty of court on remission of record.

"Section 13. That if, upon any appeal to the Supreme Court, any portion or the whole of any finding or adjudication of escheat shall be reversed or modified, the court in which said escheat proceedings have been instituted shall, immediately upon the remission of the record thereof by the Supreme Court, prepare and file a corrected adjudication or finding, in accordance with the determination of the Supreme Court upon said appeal.

On final determination escheator to give bond to the Commonwealth.

"Section 14. That from and immediately after the final determination of any escheat proceedings as aforesaid, the escheator shall file, in the court wherein said proceedings in escheat have been instituted, a bond to the Commonwealth, with sufficient security to be approved by the court, conditioned for the faithful performance by him of his duties as escheator, and also that he will faithfully account for and pay over to the State Treasury the proceeds of all property, real or personal, found to have escheated which shall come into his possession as escheator.

Certified copy of final adjudication to be filed.

"Section 15. That from and immediately after the final determination of any escheat proceedings as aforesaid, the escheator shall cause a duly certified copy of the final adjudication or finding in escheat, under the seal of the court filing the same, to be transmitted to the Auditor-General, and shall also cause a copy thereof, duly certified in like manner, to be filed in the court of common pleas of every county in which any of the real estate escheated is situate, other than the county in which the proceedings in escheat have been instituted.

After thirty days estate to be surrendered to escheator.

"Section 16. That at the expiration of thirty days from and after the filing of the final finding or adjudication in escheat, or the absolute confirmation of the

same, the person or persons having in their possession any moneys found to have escheated shall, forthwith, pay the same to the escheator, upon receiving from him an acquittance and discharge therefor. And if any person or persons shall have in their possession any personal property found to have escheated, other than money, the escheator may forthwith apply by petition to the court for an order, directed to the person or persons having the same in his possession, to sell and dispose of the same, in such manner and form, and upon such advertisement, as the court shall direct. And the court shall thereupon, if no valid cause be shown to the contrary, order and direct such sale to be made as aforesaid, and shall further order an account thereof to be duly returned to the court. And upon return of said sale, the court may order and direct such compensation as it may deem proper to be paid to the person or persons effecting the same, and shall also order and direct all the expenses of said sale to be deducted from said proceeds, and shall thereupon further order and direct the residue of said proceeds to be paid to the escheator, upon the receipt from him of an acquittance and a discharge therefor.

Order to sell personal property.

Expenses of sale, etc.

"Section 17. That at the expiration of thirty days from and after the filing of the final finding or adjudication in escheat, or the absolute confirmation of the same, the escheator may apply by petition to the court having jurisdiction of the proceedings in escheat, for an order directing the sale of all real estate found to have escheated, situate in the county where the escheat proceedings have been instituted, and the said court shall thereupon, if no valid cause be shown to the contrary, order and direct the administrator or executor of the person who has died last seized or possessed of said real estate, or the receiver, or other officer, or trustee, or person, acting in a fiduciary capacity, having possession of the same, or if for any reason they cannot act, then some other proper person or persons, to sell said real estate, in such manner and form and upon such advertisement as the court shall direct, and to execute and deliver a good and sufficient deed or deeds to the purchaser thereof; Provided, however, that no sale or sales shall be ordered or made under the provisions of this act in any case, until security, to be approved by the court, shall be duly entered by the person or persons ordered and directed to make such sale, in at least double the value of the real estate proposed to be sold, conditioned for the faithful application of the purchase

Application to sell real estate.

Order to sell.

Proviso.

Security.

money according to the decree of the court; which security shall inure to the benefit of all parties interested; and such security being so given, no purchaser of said real estate shall be bound to see to the application of said purchase money.

Title to be absolute for estate escheated.

"Section 18. That the title acquired by all purchasers of real estate, sold under and by virtue of the provisions of this act, shall be absolute and indefeasible, for all such estate or estates as shall have been found to have escheated to the Commonwealth. And the

Effect of sale on encumbrances.

sales shall have like effect as to the discharge of mortgages, judgments, liens, or other incumbrances upon the said real estate, as sales made by the decree of any of the several orphans' courts of this Commonwealth for the discharge of the debts of decedents now have, or may hereafter have in the seveal counties of this Commonwealth under existing laws. And it shall be the

Application of purchase money.

duty of the court to decree the proper applicatiou of the purchase money of said property, with the aid of an auditor, when deemed necessary, to the discharge of the various mortgages, judgments, liens, or other incumbrances upon said real estate. And the said court shall further order and decree that the residue of the proceeds of the said real estate, after the payment of all expenses of sale and the payment and discharge of said mortgages, judgments, liens, and incumbrances thereon, shall be forthwith paid to the escheator, upon the receipt from him of an acquittance and discharge therefor.

Proceedings when real estate is situated in another county.

"Section 19. That whenever any real estate found to have escheated shall or may be situate in any other county than that in which the proceedings in escheat have been instituted, the escheator may apply by petition to the court of common pleas of said county, for an order directing the sale of the property aforesaid, and the said court shall thereupon proceed in the premises in like manner and form as hereinbefore provided relative to sales of real estate by order of the court having original jurisdiction in escheat proceedings, and said sales shall be made by the same person or persons upon the entry of like security, in like manner and form, and with the same force and effect, and the like proceedings shall be had touching the distribution of

Proviso.

the proceeds of said sale; Provided, nevertheless, that no court other than that in which the proceedings in escheat have been originally instituted, shall have power to make any order touching the sale of escheated real estate until a duly certified copy of the final finding or adjudication of escheat is filed therein.

"Section 20. That no sale of escheated real estate under the provisions of this act shall be deemed or taken to invalidate any title previously acquired thereto under a sale thereof for unpaid taxes, or to authorize the purchaser to redeem said real estate in such case. Effect of such sale on tax title.

"Section 21. That the escheator shall, immediately after the receipt by him of any moneys escheated to the Commonwealth, of the proceeds of any property, real or personal, escheated to the Commonwealth, account for and pay over into the State Treasury the full amount received by him, as aforesaid. Escheator to pay moneys received to State Treasury.

"Section 22. That any person or persons, interested or claiming to be interested, in any property, real or personal, which shall be found to have escheated to the Commonwealth, who have had no actual notice, by citation, advertisement, or otherwise, of the pendency of any proceedings in escheat, prior to the conclusion of the audit of the account of the person having the escheated property in his possession, and who shall not have subsequently appeared either in person or by attorney in said escheat proceedings, may, at any time within three years next after the filing of the final adjudication or finding in escheat, or the absolute confirmation thereof, traverse the same under oath or affirmation, by writing filed in the court finding the same, setting forth his, her, or their interest in said property, and in what particular said finding or adjudication is not true and correct, which said traverse shall be tried in the court of common pleas of the same county in which the original proceedings have been instituted, or, where the proceedings have been instituted in the Supreme Court, in the court of common pleas of such county as said Supreme Court may designate. And where said escheat proceedings have not been instituted in the court of common pleas, the courts wherein they have been instituted shall certify the finding or adjudication of escheat and the traverse thereof to the proper court of common pleas for trial. And said traverse shall be tried in like manner and form and with like effect as traverses of inquisitions in escheat have been heretofore commonly tried under existing laws. And a writ of error shall lie in such case to the Supreme Court at the suit of any traverser or of the Commonwealth. And upon the determination of such traverse the court trying the same shall, if necessary, certify the final result thereof to the court in which the original proceedings have been instituted, and in case upon the trial of said traverse it shall be found that the property Persons interested who have not had notice may traverse said adjudication. Said traverse to be tried in common pleas. Writ of error. Final determination to be remitted. Proceedings thereon.

in question or any part thereof had not escheated, and that the person or persons filing said traverse are entitled to the same, or any part thereof, then and in said case such person or persons shall be entitled to receive, and to have delivered to them, possession of all such property, real or personal, as shall not have been sold or paid into the Treasury of the Commonwealth, and in case the same has been sold or paid into the Treasury of the Commonwealth, to receive back again from the Commonwealth such sum or sums of money as may have been realized from the sale or payment thereof, after deducting all expenses or a proportionable part of said sum or sums, according as his or their interest shall be made to appear; Provided, nevertheless, that if, at the time of the institution of the proceedings in escheat as aforesaid, any person having any claim to any of the property, real or personal, found to have escheated, shall be insane or a minor, then and in such case, said person, whether he has had actual notice of the pendency of the proceedings in escheat or not, may, if he has not appeared in said proceedings by his committee or guardian, or by the attorney of such committee or guardian, at any time within three years after recovering his sound mind and memory, or attaining full age, as the case may be, traverse the said finding or adjudication of escheat, in like manner and form, and with like force and effect, as is hereinbefore provided.

Proviso.

If person interested be insane or a minor.

Orders and decrees may be enforced by attachment.

"Section 23. That the various courts of this Commonwealth having jurisdiction in escheat proceedings shall have full power and authority to enforce all orders and decrees made by them therein, by attachment or other proper process as the case may require.

Compensation to Informant.

"Section 24. That any person who shall first inform the Auditor-General by writing, signed by such person in the presence of two subscribing witnesses, that any escheat hath occurred by reason of the fact that any person hath died intestate, without heirs or known kindred, a widow, or surviving husband, and who shall procure necessary evidence to substantiate the fact of said escheat, and shall prosecute the right of the Commonwealth to the property escheated with effect, shall be entitled to one-third part of the price which such property, real or personal, shall produce, after all costs of prosecution and charges of sale are deducted therefrom; Provided, nevertheless, that before such third part be paid to said person or his representative, he, she, or they shall give bonds to the Commonwealth, with sufficient security, to be approved by the Auditor-General,

Proviso.

Bonds to Commonwealth.

conditioned to refund the same or any part thereof, as may be, if any claimant to the estate upon which said one-third shall become payable, appear within the time hereinbefore limited touching said estate and traverse the finding or adjudication of escheat and establish the title to the property, real or personal, found to have escheated as aforesaid.

Proceedings where two or more persons claim reward.

"Section 25. That in all cases of dispute, where two or more persons shall claim the reward allowed by the preceding section of this act, in consequence of information given to the Auditor-General of an escheat, it shall and may be lawful for such person or persons, or either of them, to petition the court having jurisdiction of the escheat proceedings, stating the facts, whereupon the said court may proceed to determine the matter of dispute, and if the case require it, may direct an issue to be framed between the parties to try their right to the award aforesaid, which shall be paid according to the final determination of said court, or of said issue, as the case may be.

Limitation.

"Section 26. That whensoever any property hath escheated or shall escheat to the Commonwealth by reason of the death of the owner last seized or possessed thereof, intestate, without heirs or known kindred, a widow, or surviving husband, and there have been no proceedings had, as and for an escheat for the period of twenty-one years after the decease of the said owner, the Commonwealth shall thereafter forever be debarred from claiming the same as escheated, and that whether such period hath already elapsed or whensoever hereafter it shall have fully elapsed.

Fees.

"Section 27. That the fees in cases of escheat shall be as follows: To the escheator five per centum on all moneys paid into the State Treasury from the sales of escheated property, together with all expenses incurred by him for, in, and about the prosecution of the escheat, and the performance of the duties imposed upon him by this act. And the fees of the prothonotaries and the clerks of the several courts, and the sheriffs and witnesses, shall be the same which they are entitled to receive for similar services in the same court. The above fees and expenses shall be paid out of the State Treasury by a warrant from the Auditor-General in the customary manner.

Repeal.

"Section 28. That all acts and parts thereof or supplements thereto relative to escheats, inconsistent with or supplied by the provisions of this act, be and the same are hereby repealed."

"It shall not be necessary for the informant to give the individual names of tenants in common, co-tenants, joint tenants, or partnerships, nor their individual interests, where the same are unknown, but the same shall escheat in the name by which their joint interests were or are held; Provided, that where such names or interests are not known, affidavit to that effect shall be made by the informant, and filed of record." Act of June 27, 1864 (P. L., 951), Section 2.

"Whenever any trustee, bailee, or other depository is or shall be seized or possessed of property, real, personal, or mixed, as a fiduciary agent, which property is or shall be without a rightful owner, the same shall escheat to the Commonwealth, subject to all legal demands on the same." Act of April 17, 1869 (P. L., p. 71), Section 3.

"In every case wherein goods or chattels or lands be holden in common with any person whose estate shall escheat, the Commonwealth shall not acquire by such escheat any other or greater title to the same than the person who shall die intestate, without heirs or known kindred, as aforesaid." Section 11, Act September 29, 1787, 2 Smith's Laws.

Unclaimed Dividends and Deposits. The cashiers of all banks, savings institutions, and other institutions receiving deposits of money are required on the first Monday of January in each year to forward to the Auditor-General a certified list of the names of any persons having unclaimed dividends or deposits in their banks, which shall have remained unclaimed for three years, or the amount of which has neither been increased nor diminished for a period of three years then preceding. Act April 16, 1850 (P. L., p. 477), Section 52. Advertisement of such lists shall be made, and at the expiration of three years from the first publication such unclaimed dividends or deposits shall escheat to the Commonwealth, and be paid into the State Treasury. Section 4, Act March 6, 1847 (P. L., p. 222). But the same may be refunded on the production of proper evidence to the Governor, Auditor-General, State Treasurer, and Attorney-General. Section 1, Act June 4, 1885 (P. L., p. 73); Section 1, Act June 25, 1895 (P. L., p. 283).

The Act of April 17, 1872 (P. L., p. 63), entitled "An act relating to unclaimed deposits in savings banks and transfer of stock," provides, in its second section, as follows:

"That where any depositor with any savings fund, savings institution, or savings bank, whatsoever, or his legal representatives, shall omit to make any demand for the amount deposited by him, or for any part thereof, for the space of thirty years after the last deposit or payment was made by or to him, or his said representatives, no action or suit shall thereafter be brought by him or them, for the amount of such deposit, against such corporation, but the same shall be paid over instead to the State Treasurer for the

use of the State. . . . And provided, that it shall be lawful for such depositor, or his legal representatives, at any time after the amount of his deposit shall have been paid over into the Treasury of the Commonwealth, as aforesaid, to institute and prosecute an action of debt therefor against the State Treasurer for the time being, in the Court of Common Pleas of Dauphin County; and, on the recovery of judgment in such action, it shall be lawful for the court to issue thereon a writ, commanding such State Treasurer, or his successor in office, to cause the amount thereof, with costs, but without interest, to be paid to the party entitled to the judgment, out of any unappropriated moneys in the hands of the State Treasurer . . . and to enforce obedience to such writ by attachment, etc.

"Section 3. It shall be the duty of the treasurer or cashier of every incorporated savings fund institution or bank in this Commonwealth, on or before the first day of November in each year after the present, to make returns to the Auditor-General, of the amount of all such unclaimed deposits as referred to in the previous section of this act, with the names and residences of the depositors, so far as known, and before the first day of January, then next ensuing, pay over the amounts so returned to the State Treasurer, whose receipt therefor shall be a full and sufficient discharge to such saving fund institution or bank from any further liability to any such depositor."

This act appears to supersede the provisions of the Act of March 6, 1847 (P. L., p. 222), and April 16, 1850 (P. L., p. 495, Sec. 52), so far as savings funds, savings institutions, and savings banks are concerned, these institutions reporting deposits, only, which have not been demanded, or any part thereof, for thirty years, while other banks return such deposits not increased or diminished for three years, under the Acts of 1847 and 1850. This is, in fact, the practice, though the Act of 1872 has no repealing clause therein.

Decisions. Where a public escheator fails to pay to the Commonwealth money collected by him in his official capacity, the informer has no claim against the estate for his commission. Ayres's Estate, 1 Pears., 413.

The twenty-one years' limitation upon the Commonwealth, wherein to collect an escheat, does not apply to cases where the person for default of whose heirs the estate escheats does not die in actual possession of the property. An interest in remainder, therefore, cannot be escheated until the expiration of the life estate, and the limitation only begins to run from that time. Com. *v.* Naile, 88 Pa., 429.

Proceedings to escheat an estate of a decedent who died intestate, without heir or known kindred, are regulated by statute, and these statutes permit any person in whose hands or possession the goods and chattels are found, to traverse the inquisition in the court of common pleas. Com. *v.* Crompton, 137 Pa., 138.

Where, the traverser, being the administrator of the decedent and claiming to hold the goods and chattels in dispute in his own right, under an alleged gift, an effort was made to surcharge him with them, upon a pending proceeding in the orphans' court, the right of the traverser to the jurisdiction of the court of common pleas cannot be doubted. *Ibid.*

Where it is apparent from the evidence that an absolute and present gift of non-negotiable securities—*e. g.*, shares of railroad stock—is intended, a gift of them, offered against a volunteer, may be made by delivery to the donee, without assignment or indorsement in writing, and without compliance with the forms required by the corporation. *Ibid.*

2. Escheat for Forfeiture Upon Attaint.

Provided for by Section 17, Act of September 29, 1787, 2 Smith's Laws, 425.

3. Escheat by Alienation in Mortmain.

Wherever individuals or corporations are possessed of property which they are not entitled by law to hold, either from the character of the persons or corporations holding the same, or the nature of the property so held, the said property escheats to the Commonwealth. See Acts April 6, 1833 (P. L., p. 167); April 26, 1855 (P. L., p. 328); April 19, 1844 (P. L., p. 313), Sec. 1; May 1, 1861 (P. L., p. 433), Sec. 1; May 8, 1876 (P. L., p. 127), Sec. 1; May 29, 1889 (P. L., p. 395), Sec. 1; June 9, 1891 (P. L., p. 249), Sec. 1; June 2, 1887 (P. L., p. 302), Secs. 1 and 2; June 1, 1881 (P. L., p. 38), Secs. 1 and 2; April 17, 1889 (P. L., p. 35), Sec. 1; April 30, 1891 (P. L., p. 39), Secs. 1 and 2.

"Where any conveyances of real estate in this Commonwealth have heretofore been made by any church, religious, eleemosynary, or charitable corporation or corporations of another State, to any citizen of the United States, or to any corporation chartered under the laws of this Commonwealth, and authorized to hold real estate, before any inquisition shall have been taken against the real estate so conveyed to escheat the same, such citizen or corporation grantee shall hold, and may convey such title and estate, indefeasible as to any right of escheat in this Commonwealth by reason of such real estate having been held by an alien or corporation not authorized to hold the same by the laws of this Commonwealth." Act of May 29, 1889 (P. L., p. 395).

Decisions. The fact that a foreign railroad company having no license to hold lands in Pennsylvania is the owner of the entire capital stock of a mining company, incorporated in this State, authorized to hold lands, does not render liable to escheat lands held by the mining company, to which railroad companies have neither legal nor equitable title. Com. *v.* R. R. Co., 139 Pa., 457.

As Section 5, Article 17, of the State Constitution, prohibiting common carriers from engaging in mining etc., or in any other business than that of common carriers, and from holding lands not necessary to their business, affixes no penalty for its violation, lands held in violation thereof are not liable to escheat, although the franchises of the offending company may be forfeited therefor. Com. *v.* New York, etc., R. R. Co., 132 Pa., 591.

The Act of April 26, 1855 (P. L., p. 329), prohibits the acquisition or holding by a corporation of any real estate, either directly or through a trustee, or other device whatsoever, unless specially authorized by the laws of the Commonwealth, and enacts that all property acquired or held in violation of the prohibition shall be escheated to the Commonwealth by proceedings under *quo warranto*.

Said act does not authorize an escheat of lands held and used by a common carrier for the purpose of carrying on the business of mining coal for transportation over its works, for the violation of Sec. 5, Art. 17, of the Constitution; the escheat which it provides for can be enforced only for the reason that an acquisition or holding of the lands is in violation of the prohibition of the act. *Ibid.*, 591.

In order to escheat land under said Act of 1855, upon the ground that it is held by a foreign railroad company, without a license so to do from the Commonwealth, it must appear that such corporation has either the legal or equitable title to the land itself; otherwise no escheat can be declared, although such corporation may control the land through its ownership of the stock of another corporation holding the title by authority of law. *Ibid.*, 591.

A foreign railway company, having no license to hold mineral lands in this State, caused its president to purchase such lands by an agreement, in his own name, furnishing to him the money required for a hand payment made on the contract; it then purchased the charter of a Pennsylvania mining corporation, authorized to hold such lands, and retained all its capital stock, except a few shares to qualify directors.

The contract for the purchase of such lands was thereupon assigned to said mining company, which subsequently received from the vendor a conveyance of the legal title; the mining company afterward acquired the stock of another mining company, and conveyed the lands to the latter. A proceeding to escheat the lands was begun in 1884, after these conveyances were made. In such case, when the facts are undisputed, the court should declare their effect as matter of law; the holding by the carrier company of the stock of the mining company was authorized by Act of April 16, 1869 (P. L., p. 31); the transaction did not constitute an unlawful "device" within the meaning of Sec. 5, Act of April 26, 1855 (P. L., p. 329), and, in any event, the Act of April 8, 1881 (P. L., p. 9), was a bar to the proceeding. *Ibid.*, 591.

Fee of Escheator. In a case where an escheat is not established, but in which the proceedings in escheat have been the means by which heirs to the estate have been discovered, the court will allow reasonable fees to the escheator, it not being permitted to the heirs who have been discovered by means of the proceeding to prevent the payment of the expenses of the proceedings, which have resulted in the estate being transferred to them. Bryant's Estate and Appeal, 176 Pa., 324, 325, 326.

NOTE.—The foregoing does not appear in the case as reported, but in the Auditor's report, sustained by the court.

Information of Escheats. Persons desiring to give notice of an escheat, for want of heirs or known kindred, should address a letter to the Auditor-General stating that A. B. died on such a date, at such a place, intestate and without heirs or known kindred, a widow or surviving husband, possessed of certain property (describing the same as fully as possible), which property is, therefore, believed to have escheated to the Commonwealth. This letter should be signed by the informant, and his signature should be attested by two subscribing witnesses. On the receipt of such information, it is duly entered of record, as of the day and hour of its receipt, and the informant is communicated with for such further information as may be necessary. On the Auditor-General being convinced of the probability that an escheat has occurred, he commissions a resident of the county in which the estate of the decedent, or the greater part thereof, is believed to be located, as escheator in said case, and the escheator is directed to confer with the informant for such information as may be essential to the proper prosecution of the escheat.

Escheats for forfeiture upon attaint being wholly obsolete, and escheats by alienation in mortmain of extremely rare occurrence, they are not here further considered than by reference to the acts providing therefor.

On an escheat being declared, the full amount of the estate escheated is required to be paid into the State Treasury, and the costs incurred in the case, the commission of the escheator, and the share of the informant are paid by warrant of the Auditor-General.

Bond must be given by the informant for the refund of his share of the escheat in the event of heirs appearing, as required by the twenty-fourth section of the act, before payment is made to him of his said share.

CHAPTER XII.

MISCELLANEOUS.

In addition to the sources above enumerated, the Commonwealth receives payments, made directly to State officials, from the following:

Tax on Fertilizers. Manufacturers and importers of commercial fertilizers, which contain nitrogen, ammonia, potash solution, and phosphoric acid, are required to pay ten dollars for each one hundred tons imported or sold; twenty dollars for more than one hundred and less than five hundred tons, and thirty dollars for five hundred tons or more. Act of June 28, 1879, Sec. 2 (P. L., p. 180). This tax is paid to the Secretary of the Commonealth.

New York, Lake Erie and Western R. R. Co. This company is required to pay $10,000 annually for the privilege of constructing and maintaining a portion of its road through the counties of Pike and Susquehanna in this State. Act of March 26, 1846 (P. L., p. 179).

The payment of the $10,000 per annum for right of way does not exempt said company from such other taxation as may be imposed upon corporations of the same class. Cases on State Tax on Corporate Loans, 25 W. N. C., 19; Erie R. R. Co. *v.* Com., 66 Pa., 84.

Enrolment Tax. The Acts of April 16, 1845 (P. L., p. 532), and May 1, 1868 (P. L., p. 106), provided that no private act should be enrolled, or have the force or effect of law, until the party requiring the same should have paid into the State Treasury a certain sum therein named, the amount thereof depending upon the nature of the act, and (if a law authorizing the incorporation of a company) upon the nature of the corporation to be formed and the amount of capital stock which said company was authorized to have. Supplements to the said Act of 1868 are the Acts of April 17, 1869 (P. L., p. 69); April 14, 1870 (P. L., p. 75); May 3, 1871 (P. L., p. 249), and April 3, 1872 (P. L., p. 39).

The State Constitution of 1873 prohibits the enactment by the General Assembly of all such private acts as were subject to the payment of the enrolment tax, under the acts above referred to, so that while the tax has never been abolished by law, it is in a condition of "innocuous desuetude."

Tax on Gross Receipts of Notaries Public. Notaries public in the County of Philadelphia are required to make annual reports of their gross receipts from their notarial business to the Auditor-

General, and pay thereon a tax of five per centum. Act of May 20, 1865, Sec. 1 (P. L., p. 846).

The Act of April 14, 1840, Sec. 3 (P. L., 335), subjected notaries public to the provisions of the Act of March 10, 1810 (P. L., p. 79), which required all prothonotaries, registers of wills, and recorders of deeds to keep an account of all fees received by them, and to annually furnish the Auditor-General with a copy thereof, and to pay to the use of the Commonwealth fifty per centum of their receipts in excess of $1500 per annum. The Act of May 20, 1865 (P. L., p. 846), permitted notaries public in Philadelphia county to charge fees fifty per centum in excess of those then collectible by law, and, in lieu of other taxation, they were required to pay a tax of five per centum upon the amount of their gross receipts, leaving notaries in other counties subject to taxation as provided in the Act of 1840.

From this *it would seem* that notaries outside of Philadelphia County should make annual returns to the Auditor-General, and pay for the use of the Commonwealth fifty per centum on all their receipts in excess of $1500 per annum; but such reports are not required, only those notaries public doing business in Philadelphia County making returns to the Auditor-General. It is, however, improbable that any notary outside of Philadelphia receives fees in excess of $1500 in any one year.

Miscellaneous. The Commonwealth also receives revenue from the sale of vacant and unpatented lands, from penalties, the sale of the pamphlet laws—*i. e.*, the volume containing the laws enacted at each biennial session of the Legislature—and interest from the General Government on United States bonds in the Sinking Fund.

Tonnage Tax (Obsolete).

A description of the State tax system of Pennsylvania would be incomplete without a reference to the now obsolete tax on tonnage. The Act of April 10, 1864 (P. L., p. 218), provided as follows:

"That in addition to the taxes now imposed by law, every railroad, steamboat, canal, slack-water navigation, or other transportation company doing business in this Commonwealth, shall make quarterly returns to the Auditor-General, commencing upon the first day of July, said returns to be made within thirty days after the termination of each quarter, under oath, stating specifically the entire number of tons of freight traffic carried or moved by such company or corporation during the three months ending on the first day of that month, and said corporations shall pay for the use of the Commonwealth the following taxes: Upon all tonnage carried upon or over their respective lines to be graduated as follows: First, upon products of mines, for each ton of two thousand pounds, two cents; second, upon the products of the forest, or animal or vegetable food, and all other agricultural products, three

cents; third, upon merchandise, manufactures, and other articles, five cents. In all cases where the same freight is transported over different or continuous lines of transportation, then the tax hereby imposed shall be paid by the corporations carrying the same in proportion to the distances carried, as may be adjusted among themselves, the State Treasurer being required to collect the whole of the said tax from either of the companies carrying the freight, as he may select; Provided, that freight shipped through and over one or several lines of transportation shall be chargeable with but one tax as aforesaid."

This act was amended by Act of August 25, 1864 (P. L., p. 988), and the tax was continued by Act of May 1, 1868 (P. L., p. 108), being finally abolished by Act of April 24, 1874 (P. L., p. 68), which also abolished the tax on gross receipts, afterward restored by the Act of 1877.

The Act of 1874 substituted for the tonnage tax, above described, a tax on the number of tons of coal mined or purchased by companies engaged in the mining or purchasing and selling of coal, at the rate of three cents per ton. This latter tax, under the provisions of Section 9 of the Act of June 7, 1879 (P. L., p. 112), ceased and determined on and after July 1, 1881.*

This tonnage tax should not be confounded with the commutation of tonnage tax, which was a gross sum formerly paid annually by the Pennsylvania R. R. Co., in lieu of a tax or charge formerly imposed upon railroads competing with the railroads owned by the State.

* The tax imposed by the seventh section of the Act of April 24, 1874, was a franchise tax, measured by the business of a company, to wit: by the number of tons of coal mined or purchased and sold, and not upon the coal itself. The tax was constitutional. Kittanning Coal Co. *v.* Com., 79 Pa., p. 103.

PART II.

CLASS II.

Taxes and Licenses Collected by County Officers and by them Paid into the State Treasury.

THESE are as follows:

1. State tax on personal property.
2. Collateral inheritance tax.
3. Direct inheritance tax.
4. Licenses.
5. Tax on fees of public officers.
6. Tax on writs, deeds, etc.

General provision relating to all officers collecting taxes for the use of the Commonwealth:

"All borough, city, county, or State officers authorized to collect or receive taxes or license fees for the Commonwealth, shall make return of the same on the first of every month, and, within ten days thereafter pay the amount mentioned in said return to the State Treasurer, and further it shall be the duty of the State Treasurer to immediately notify the Attorney-General of any failure upon the part of any official to account as aforesaid."

Concurrent resolution, approved May 23, 1891 (P. L., p. 413). See Commonwealth *v.* Philadelphia, 157 Pa., 558.

NOTE.—In the consideration of taxes and licenses collected through the medium of county officers, it should be remembered that there are many local laws still in existence affecting such taxes and licenses, constituting so many exceptions to the general laws stated in the following pages. It has not been thought necessary to add to the dimensions of this work by attempting to cite these special laws. The residents of a given county may be assumed to know what the laws specially applicable to their county are, and to others such exceptions can have but little interest. The exceptions relate mainly to matters of administration, and a knowledge of them is not essential to an understanding of the tax system of the State. In some instances, however, these exceptions have been cited, and where many such exist, as, for example, in the case of peddlers' licenses, that fact is stated. When it is remembered that these local laws were not founded on any system, but were only enacted as the influence of the legislators from different sections enabled them to procure for their constituents such exemptions or variations from the general tax system as they deemed desirable, the inutility of referring to the same is very apparent.

CHAPTER XIII.

TAX ON PERSONAL PROPERTY.

ALL personal property of the classes hereinafter enumerated is subject to taxation in Pennsylvania, in the hands of the holder, at the rate of four mills on the dollar of the value thereof. The said tax is assessed locally, by the county assessors, upon the basis of sworn reports required to be made by taxables, annually, and upon such further information, of record or otherwise, as the assessors and county commissioners may obtain.

History. The State tax on personal property was first imposed by Act of March 25, 1831 (P. L., p. 206), which provided that the following classes of personal property should be subject to taxation for State purposes at the rate of "one mill on every dollar thereof, to be assessed in the same manner as county rates and levies," viz.: Ground-rents, moneys at interest, debts due from solvent debtors, whether by promissory note (except bank-notes), penal or single bill, bond, judgment, mortgage, and stocks in corporations (wherein shares have been subscribed in money) on which any dividend or profit is received by the holder, and public stocks (except those issued by this Commonwealth), and all pleasure carriages kept for use. The twelfth section of said act provides that the act shall be in force for five years from the date thereof. The reason for thus limiting the collection of the tax to five years was that it was then generally believed that the earnings of the great public works then in course of construction (canals, railroads, etc.) would, by the expiration of that time, defray all expenses of the State government and make the further imposition of the tax unnecessary.

The said Act of March 25, 1831, was repealed just before the expiration of the limit fixed therein, by the Act of February 18, 1836 (P. L., p. 36), which act also provided for the incorporation of the United States Bank as a State corporation, its charter from the General Government having then expired. The sixth section of this act provided that the said bank should pay to the Commonwealth two million dollars "in consideration of the privileges granted by this act, and in lieu of all taxes on dividends." In view of the anticipated receipt of this money it was not thought necessary to continue the imposition of the tax, although the expected revenues from the public works had not materialized, and especially as the State soon afterward received more than a million dollars from the General Government, being its share of the surplus in the United States Treasury, divided among the

States by act of Congress, of the prospect of which division there probably was some intimation at the time of the passage of the said Act of 1836.

At the passage of the Act of February 18, 1836, therefore, the State tax on personal property, as originally created, was wholly abolished, and with it all legislation relating to said tax. This point should be borne in mind, since references are sometimes made to such legislation as applicable to the tax on personal property created by subsequent enactments. It is evident, however, that when the tax was abolished, all legislation relative thereto fell with it, and no such legislation is now in force, unless revived by subsequent acts.

The second section of the Act of June 11, 1840 (P. L., p. 612), provides that the county commissioners of each county shall add to the county rates and levies, until the year 1846, one mill upon the actual value thereof, for the use of the Commonwealth.

"And upon all personal estate and property hereinafter described, owned or possessed by any person whatever; that is to say, on all mortgages, moneys at interest, debts due from solvent debtors, whether by promissory note (except notes or bills for goods sold and delivered and bank-notes), penal or single bill [or] judgment; on all stocks or shares owned or held by individuals in this Commonwealth, in any bank, institution, or company incorporated by any other State or Territory, on all loans or investments on interest, to citizens of other States, owned or held by individuals in this Commonwealth, and upon all public loans or stocks whatsoever, except those issued by this Commonwealth, owned or held as aforesaid, one-half mill on every dollar of the value thereof, on which one per cent. per annum dividend or profit may accrue to or be received by the owner or holder thereof, and an additional half mill on every dollar of the value thereof for every additional one per centum of any interest, dividend, or profit accruing to or received by such owner or holder. And upon all household furniture, including gold and silver plate owned and kept for use by any person or persons, corporation or corporations, exceeding in value the sum of three hundred dollars, five mills upon every dollar of the value thereof on such excess. Upon pleasure carriages owned and kept for use, one per cent. upon every dollar thereof. Upon watches owned and kept for use as follows: on gold lever or other gold watches of equal value, each one dollar; upon every other description of gold watches and upon silver lever watches or other silver watches of like value, seventy-five cents each; upon every other description of watches of the value of twenty dollars or upward, fifty cents each. Upon all salaries and emoluments of office, created or held by virtue of any law of this Commonwealth, one per cent. upon every dollar of the value thereof. . . ."

This act, it will be noted, is the first which relates to the State

tax on personal property *as it now exists*. The seventh section of this act provides that the treasurers of counties shall be allowed one per cent. upon the amounts of this tax respectively paid by them into the treasury of the Commonwealth; and this provision is still in force. The ninth section of the Act of May 4, 1841 (P. L., p. 310), amends the Act of 1840 as to the tax on salaries and emoluments of office.

The Act of July 27, 1842 (P. L., p. 444), provides:

"Section 7. That the county commissioners of each county of this Commonwealth shall be and they are hereby authorized and required, at the time of assessing county rates in the present year, and at the usual period of making the same, annually thereafter, in addition to the increase at present required by law, to add to the county rates and levies, for the use of the Commonwealth, upon all real and personal property now made taxable for State purposes, one mill on every dollar of the value thereof; Provided, that in the assessment of the tax imposed by this section, all stocks, mortgages, and other securities shall be assessed at the actual value thereof."

By a curious blunder in the drawing of this act, the above provision of the seventh section is re-enacted, in almost the exact language, in Section 16 of the same act, with a different proviso, which is as follows:

"Provided, that this act, so far as it relates to imposition of increase of taxation, shall not extend beyond the assessment and collection for one year."

And the words "and at the usual period of making the same, annually thereafter" are omitted from the body of the section.

The different measures adopted by the State since 1840 not having produced the necessary revenues to enable it to meet the enormous expenses growing out of the construction of the public works, the Act of April 29, 1844 (P. L., p. 486), was passed, which may be said to be the foundation of the present system of State taxation. Its thirty-second section (P. L., p. 497) provided as follows:

"And whereas, it is necessary that provision be made for the payment of the interest upon the State debt; therefore, be it further enacted, that from and after the passage of this act all real estate, to wit, houses, lands, lots of grounds, and ground-rents . . . and all other real estate not exempt by law from taxation; also all personal estate, to wit, horses, mares, geldings, mules, and neat cattle over the age of four years; also all mortgages, money owing by solvent debtors, whether by promissory note, penal or single bill, bond or judgment; also all articles of agreement and accounts bearing interest, owned or possessed by any person or persons whatsoever, except notes or bills for work or labor done, and bank notes; also all shares or stock in any bank, institution, or company, now or hereafter incorporated by

or in pursuance of any law of this Commonwealth, or of any other State or government; and all shares of stock or weekly deposits in any unincorporated saving fund institution, and all public loans or stocks whatsoever, except those issued by this Commonwealth, and all money loaned or invested on interest in any other State; also all household furniture, including gold and silver plate, owned by any person or persons, corporation or corporations, when the value thereof shall exceed the value of three hundred dollars; also all pleasure carriages, both of two and four wheels; salaries and emoluments of office, all offices and posts of profit, professions, trades, and occupations, except the occupation of farmers, together with all other things now taxable by the laws of this Commonwealth, shall be valued and assessed and subject to taxation for the purposes in this act mentioned, and for all State and county purposes whatsoever."

For the dates of repeal of provisions imposing State taxes on real estate, pleasure carriages, watches, household furniture, etc., see the History of Tax Legislation at the beginning of this work.

Section 4 of the Act of April 16, 1845 (P. L., p. 532), provided for the taxation of the public loans and stocks issued by the Commonwealth (exempted by prior acts) at the rate of one-half mill on each dollar of the value thereof, on which one per cent. per annum of interest shall accrue to the holder, and an additional half mill for every additional one per cent. of interest, the said tax to be deducted by the State Treasurer from the interest paid on such public loans.

The Act of April 22, 1846 (P. L., p. 486), provided :

"Section 1. That the county commissioners of each and every county in this Commonwealth are hereby authorized and required, annually hereafter, at the usual period of making county rates and levies, to assess or cause to be assessed, for the use of the Commonwealth, upon all stages, omnibuses, hacks, cabs, and other vehicles used for transporting passengers for hire, used or possessed within this Commonwealth, by any person or persons, or by any corporate body or bodies, and upon all annuities over two hundred dollars, except those granted by this Commonwealth or by the United States, and upon all property, real or personal (not taxed under existing laws), held, owned, used, or invested by any person, company, or corporation, *in trust* for the use, benefit, or advantage of any other person, company, or corporation, excepting always such property as shall be held in trust for religious purposes, three mills upon each and every dollar of the value thereof."

The Act of March 15, 1847 (P. L., p. 396), provided that the Act of April 22, 1846, should "not be so construed as to impose a tax on the running or book accounts of merchants or others, for goods sold or work done."

The Act of April 25, 1850 (P. L., p. 572), provided :

"Section 22. That hereafter no law of this Commonwealth ren-

dering moneys owing by solvent debtors liable to be assessed and taxed for any purpose, shall be construed and held to make the same liable to be assessed and taxed for *borough and township* purposes, but the same shall be exempt from any charge, tax, or assessment for any such purpose. . . ."

The Act of May 18, 1857 (P. L., p. 571), reduced the rate of the State tax on personal property from three mills on the dollar to two and a half mills.

The Act of April 4, 1868 (P. L., p. 61), provided:

"That all mortgages, judgments, recognizances, and moneys, owing upon articles of agreement for the sale of real estate, made and executed after the passage of this act, shall be exempt from all taxation except for State purposes. . . . Provided, that nothing in this act shall be construed to apply to mortgages, judgments, or articles of agreement given by corporations; Provided, that this act shall only apply to the counties of Berks, Schuylkill, Luzerne, Clearfield, Allegheny, York, Delaware, Montgomery, Chester, Lancaster, Huntingdon, Fulton, Bedford, Blair, Lebanon, Clinton, Carbon, Monroe, Lehigh, Mifflin, Westmoreland, Northampton, Juniata, Somerset, Indiana, Greene, Elk, Forest, Franklin, Perry, Cumberland, Dauphin, Lawrence, Lycoming, Union, Snyder, Erie, Crawford, Bucks, McKean, Fayette, Philadelphia, and Mercer." The Acts of March 18, 1869 (P. L., p. 415); April 10, 1869 (P. L., p. 850), and April 13, 1869 (P. L., p. 901), extend the provisions of said act to the counties of Susquehanna, Armstrong, Pike, Centre, and Wayne. Also extended to Washington County by the Act of February 12, 1870 (P. L., p. 144), and to Venango County by the Act of March 1, 1870 (P. L., p. 278).

The Act of June 2, 1871 (P. L., p. 281), repeals the provisions of the Act of 1844 and subsequent acts imposing taxes for State purposes on salaries or emoluments of public offices, and on incomes of tradesmen, occupations and professions, leaving the latter subject to taxation for local purposes only, as before the passage of the Act of 1844.

The Act of April 9, 1873 (P. L., p. 68), provided:

"That all laws and acts of Assembly, exempting the loans, bonds, or other evidences of indebtedness of, or issued by, any county, city, borough, or incorporated district of the Commonwealth, from the payment of taxes for the use of the Commonwealth, be and the same are hereby repealed, so far as provides for such exemption; and all such loans . . . heretofore or hereafter issued or existing, shall be liable for the payment of the taxes now or hereafter imposed by law for the use of the Commonwealth upon public loans or other moneys bearing interest; Provided, that this act shall not apply to any bonds negotiated into the hands of innocent holders."

The Act of March 24, 1877 (P. L., p. 44), provided:

"That the scrip, bonds, and certificates of indebtedness of any county in this Commonwealth, owned by any public corporation within such county, and the income from which is by law appropriated to the support of the poor and the maintenance of the public roads of such county, be and the same are hereby exempted from taxation for State purposes."

The Act of June 7, 1879 (P. L., p. 120), Section 17, was the first to bring together the different subjects made taxable by the Act of 1844 and subsequent acts (and not afterward exempted) and to provide one general measure applicable to all such classes of personal property. This act made such classes of property taxable only when held by "any person or persons," and the courts held that this did not apply to such property held by corporations. Fox's Appeal, 112 Pa., 337. The act, moreover, neglected to tax trust funds. The act is so recent and so capable of being readily referred to that its text is not given here. It also provided that all mortgages, judgments, etc., should be exempt from all taxation except for State purposes.

The Act of June 10, 1881 (P. L., p. 99), was, in all important respects, like that of 1879, in this regard, except that it changed the rate of taxation from three mills, as provided by the Act of 1879, to four mills.

The Act of June 30, 1885 (P. L., p. 193), was a codification and re-enactment, with modifications, of all previous acts upon the subject, not only as to the tax, but to the machinery for collecting the same, as well. Most of its provisions were re-enacted by the Act of June 1, 1889, now in force. The Act of 1885 reduced the tax to three mills, as before the passage of the Act of 1881; and, like the Acts of 1879 and 1881, provided for the imposition of the tax only on property owned or possessed by "any person or persons," and, also like the other said acts, did not provide for the payment of tax on trust funds. The Acts of 1879, 1881, and 1885, each contain a provision that mortgages, judgments, etc., shall not be taxable except for State purposes. This provision was omitted from the later Acts of 1889 and 1891, and it is, therefore, claimed by some persons that mortgages, bonds, etc., are now liable to taxation for county purposes in the seventeen counties not enumerated in the Act of 1868, *supra*, and its supplements. Whether the dropping of said provision from said acts would be held, should the subject be adjudicated, an evidence of an intention to repeal the same, it is impossible to say; but it is a fact that the provision was not omitted from the said acts with the intention of repealing it, but that such omission was an oversight. And it is also a fact that no attempt has been made to tax such classes of personal property for county purposes in the counties referred to.

The Acts of 1889 and 1891, which are still in force, are as follows:

Classes of Personal Property Subject to the Tax. Section 1, Act of June 1, 1889, as amended by the Act of June 8, 1891:

"That from and after the passage of this act all personal property of the classes hereinafter enumerated, owned, held, or possessed by any person, persons, copartnership, or unincorporated association or company, resident, located or liable to taxation within this Commonwealth, or by any joint-stock company or association, limited partnership, bank, or corporation whatsoever, formed, erected, or incorporated by or under or in pursuance of any law of this Commonwealth, or of the United States, or of any other State or government, and liable to taxation in this Commonwealth, whether such personal property be owned, held, or possessed by such person or persons, copartnership, unincorporated association, company, joint-stock company or association, limited partnership, bank, or corporation, in his, her, their, or its own right, or as active trustee, agent, attorney in fact, or in any other capacity for the use, benefit or advantage of any other person, persons, copartnership, unincorporated association, company, joint-stock company, or association, limited partnership, bank, or corporation, *is hereby made taxable annually for State purposes at the rate of four mills on each dollar of the value thereof*, and no failure to assess or return the same shall discharge such owner or holder thereof from liability therefor to the Commonwealth—that is to say:

"1. All mortgages.

"2. All moneys owing by solvent debtors, whether by promissory note or penal or single bill, bond, or judgment.

"3. All articles of agreement and accounts bearing interest.

"4. All public loans whatsoever, except those issued by this Commonwealth or by the United States.

"5. All loans issued by, or shares of stock in, any bank, corporation, association, company, or limited partnership, created or formed under the laws of this Commonwealth, or of the United States or of any other State or government, including car-trust securities and loans secured by bonds, or

"6. Any other form of certificate, or evidence of indebtedness, whether the interest be included in the principal of the obligation or payable by the terms thereof.

"*Except* shares of stock in any corporation or limited partnership liable to the capital-stock tax imposed by the twenty-first section of this act, *or relieved from the payment of tax on capital stock* by said section.

"7. All moneys loaned or invested in other States, Territories, the District of Columbia, or foreign countries.

"8. All other moneyed capital in the hands of individual citizens of the State.

"Provided, that this section shall not apply to bank-notes or

notes discounted or negotiated by any bank or banking institution, savings institution, or trust company, and

"Provided, that the provisions of this act shall not apply to building and loan associations."

Constitutional Provision Relative to Taxation. Sections 1 and 2 of Article IX. of the State Constitution appear to contemplate the taxation of *all* classes of property, except "public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity," which the General Assembly may, by general laws, exempt from taxation; but the failure to enumerate them in revenue bills has actually relieved very many classes of property from taxation, without specifically exempting them. It has been a marked feature of the bills which have been introduced at the various sessions of the Legislature of late years, proposing radical changes in our tax system, that they have attempted to tax almost every imaginable kind of personal property, from the workman's tools to the farmer's harvests. These bills have been very generally supported by the working classes, for the benefit of which they were supposed to operate, but it has never seemed to occur to the supporters of these bills that while the luxuries of the rich might be taxed thereunder, yet the poor man, being taxed upon all his utensils as well as the material results of his labor, may be much less able to endure the comparatively light burden put upon him than the rich man is to bear the heavier taxation imposed on him.

"All other Moneyed Capital." The provision for the taxation of "all other moneyed capital in the hands of individual citizens of the State," although it appears to cover all capital not previously enumerated, has not, in the operation of this law, proved to be applicable to the taxation of any property. The accounting officers at one time attempted to tax paid-up policies of insurance, as "other moneyed capital," but the Attorney-General held, in an opinion delivered upon the subject, that to be taxable, a subject must be expressly enumerated in the act (see this opinion in 17 County Court Reports, 183); so that the general provision referred to appears not to be of wide application, it having been doubtless inserted, as suggested by Mr. Shapley, in his "Revenue Act of 1889," "in order to give a seeming compliance with the acts of Congress . . . which provide that shares in National banks shall not be taxed at a greater rate than 'other moneyed capital in the hands of individual citizens of such State.'"

Corporate Obligations. As has already been observed under the head of Tax on Corporate Loans, the various obligations enumerated in the preceding section, when issued by domestic corporations, either public or private, are segregated from similar obligations issued by individuals, and form a distinct class for pur-

poses of taxation; the tax thereon being collected by the treasurer of the company issuing the obligation, who deducts the tax from the interest paid on the said indebtedness. The obligations are then free from taxation in the hands of the holder, as provided in Section 2 of the Act of 1889, which follows. It is evident, however, that when no interest is paid, no tax can be collected on such corporate loans; while in the case of similar obligations issued by individuals, tax is collectible, whether they bear interest or not. See Perry County *v.* Troutman, 144 Pa., 361. There thus arises an inequality between the taxation of the indebtedness of individuals and that of corporations. An attempt has been made to equalize the taxation on the two kinds of obligations, by inserting in the blank upon which taxables are required to make their returns of personal property a provision that the holders of the obligations of corporations shall include the same in their returns of personal property, if no interest is paid thereon by the corporations issuing them, during the tax-year. But the return of personal property for taxation is made at or near the beginning of the tax-year, while the tax on corporate loans is not payable until the end of said year. How, then, can the taxable be sure, when he makes his return of personal property to the assessor, that interest will or will not be paid, during the tax-year at the beginning of which he reports, on the corporate obligations held by him? Should he return such obligations to the assessor in the belief that no interest would be paid thereon during the year, he would, if in fact such interest *were* paid, be taxed twice on the same obligation, and be without any remedy whatever. Moreover, the proviso to Section 2 of the Act of 1889, prohibiting taxables from returning corporate obligations to the assessors, is without any exception whatever, so that there is grave doubt whether the provision for the return of corporate obligations on which no interest is paid, to the local assessors, should have been inserted in the blank referred to. See page 77.

Shares of Stock. It will be observed that the shares of stock of corporations liable to the tax on capital stock (which corporations constitute by far the largest class of those subject to taxation), and the shares of companies expressly relieved from the payment thereof—*i. e.*, manufacturing companies (with some exceptions)—are expressly relieved from taxation in the hands of their holders. This is because the capital stock, of which the shares merely show what proportion is owned by the holders thereof, is already taxed to the corporation. The capital stock represents the property, assets, franchises, and earning capacity of a corporation; the shares are merely evidences of the interests held in this fund by the several shareholders. Hence when the capital stock is once taxed, the shares representing it are properly relieved from taxation.

Shares of stock in foreign corporations are, however, taxable, although the capital stock of the companies issuing such shares is

taxable in other States. McKean *v.* County of Northampton, 13 Wright, 519.

An interesting point which has never been judicially passed upon is the following: As above stated, the shares of stock of a domestic corporation are relieved from taxation because the capital stock which they represent is already taxed. But suppose a company to have but a small part of its capital invested in Pennsylvania, and therefore taxable there, while at the same time all the shares of its stock are held by residents of this State. It cannot then be said that the shares are exempted from taxation because the capital stock which they represent is already taxed, since in such case but a small portion thereof would, in fact, be taxed. Hence it would seem that, the reason for exempting the shares having failed, the shares should be taxed. *Cessat ratione cessat ipsa lex.* The practice, however, has been, in such cases, to exempt all the shares as fully as if the entire capital stock had been taxed, but in the case of *foreign* corporations, having but a small portion of their capital stock invested in Pennsylvania, and, therefore, taxable there, the practice has been to require the shares of stock of such companies held by residents of Pennsylvania to be returned for taxation by the holders.

Decisions. An agreement was made with the lessee of coal lands that he should mine a certain amount of coal per annum at a royalty of so much per ton, and if said lessee in any one year failed to mine said full amount, the royalty thereon was to be calculated, the amount paid for the current year deducted, and interest allowed on the balance, such interest to be continued until the deficiency upon which the interest was based should be mined.

Held, that the balance due by the lessee on account of such unmined deficiency was due on an "article of agreement and account bearing interest," and, therefore, taxable. Hull *v.* County of Luzerne, 8 W. N. C., p. 366. See also Voeghtly *v.* School Directors, 1 Pa., 330.

The Act of June 1, 1889, imposes a tax upon personal property of enumerated classes, held by one "as active trustee . . . for the use, benefit, or advantage of any other person." By "person" is therein meant a particular individual having a beneficial ownership in the property, who could claim its use, benefit, or advantage, and enforce the trust in his favor. Wherefore, funds held in trust, not for any particular persons, but for charitable or religious objects, in which no particular or individual or person has any legal or equitable rights, the beneficiaries being selected from year to year at the discretion of the trustees, out of an undefined class of persons, are not taxable. General Assembly *v.* Gratz, 139 Pa., 497.

Bonds and mortgages held by a resident trustee for the benefit of a non-resident *cestui que trust* are taxable in Pennsylvania. Guthrie, Apellant, *v.* Pgh., Cin., Chic. and St. L. R. R. Co., 158

Pa., 433 ; Borough of Carlisle *v.* Marshall, 36 Pa., 397; Appeal of Phila. Trust Co., 17 W. N. C., 446.

For further decisions as to what classes of personal property are taxable, see *infra.*

How Blanks are Furnished for the Making of Returns of Personal Property by Taxables, and How and by Whom Such Reports are to be Made. (Section 2, Act June 1, 1889.)

"Section 2. That the Board of Revision of Taxes in cities coextensive with counties [Philadelphia] shall furnish the assessors of said city annually, and the commissioners of the other counties shall annually furnish the assessors of the several townships, boroughs, and cities of the respective counties, with blanks in the form supplied and prepared by the Auditor-General; and it shall be the duty of each of said assessors to furnish a copy of the same to *every taxable person,* copartnership, unincorporated association, joint-stock association and company, limited partnership, and corporation in his respective ward, district, borough, or township, upon which blank each taxable person, copartnership, unincorporated association, company, limited partnership, joint-stock association and corporation shall respectively make return annually of the aggregate amount of all the different classes of personal property made taxable by the first section of this act, held, owned, or possessed by such person, copartnership, unincorporated association, company, limited partnership, joint-stock association or corporation, either in his, her, or its own right, or as trustee, agent, attorney-in-fact, or in any other capacity, for the use, benefit, or advantage of any other person, persons, copartnership, unincorporated association, compauy, limited partnership, joint-stock association or corporation; *which return shall be made* and sworn or affirmed to by such taxable person, and, in the case of copartnerships, unincorporated associations, and joint-stock associations and companies by some member thereof; and in the case of limited partnerships and corporations by the president, chairman, or treasurer thereof; Provided, that any corporation, joint-stock association, or limited partnership doing business in more than one county shall be liable to make such return only in the county in which its principal office within this Commonwealth is situated; Provided, that the taxable person, copartnership, unincorporated association, joint-stock association, limited partnership, corporation, or other person making the return aforesaid, shall *not include* in said return the *obligations of public or private corporations,* the tax on which is required by law [Sec. 4, Act of June 30, 1885] to be collected from the holder of such obligations and paid into the State Treasury by the corporation, it being the true intent and meaning of this act that the provisions of the law in force at the time of the passage of this act, relating to the collection of the tax upon such obligations, shall remain unaffected by the present act."

Corporations paying a tax on capital stock are relieved from further taxation upon all the mortgages, bonds, and other securities owned by them in their own right, by Section 1 of the Act of June 8, 1893, which amends Section 21 of the Act of June 1, 1889, and which is, in part, as follows:

"Provided, also, that corporations, limited partnerships, and joint-stock associations liable to tax on capital stock under this section, shall not be required to make any report or pay any further tax on the mortgages, bonds, and other securities held by them in their own right, but corporations, limited partnerships, and joint-stock associations holding such securities as trustees, executors, administrators, guardians, or in any other [similar] manner, shall return and pay the tax imposed by this act upon all securities so held by them as in the case of individuals."

The question whether the bonds, mortgages, etc., held in their own right by corporations organized for manufacturing purposes (not engaged in the distilling or brewing of spirituous or malt liquors, nor enjoying and exercising the right of eminent domain), should be returned for taxation to the local assessor, has been considered at some length, under the head of Capital Stock Tax (see page 62). It will, therefore, be unnnecessary to dwell upon it here further than to state that, if a manufacturing corporation of the class above mentioned shall offer to make affidavit, and shall make the same, that the said company has been taxed upon so much of its capital stock as was invested in the bonds, mortgages, etc., held by the company in its own right, for the year for which it is sought to compel it to make such return to the assessor, or that it has been so taxed in the past and will be taxed for said year, such affidavit should be accepted in place of the regular return. This, of course, will not prevent the requiring of a regular return of all taxable personal property held by the company *in trust* for others, or in any fiduciary capacity whatever.

The above is contrary to the requirements printed on the personal property return blank; but the writer believes that it is a correct statement of the requirements of the law. The statement will, therefore, be accepted as being nothing more than the writer's personal opinion. The reader will see from the discussion of the subject under the head of "Tax on Capital Stock," above referred to, how far the decisions of the courts and the arguments there given support this view.

Non-manufacturing corporations paying a capital-stock tax, and manufacturing companies engaged in the manufacture of intoxicating liquors, and those enjoying and exercising the right of eminent domain, therefore, file with the assessor an affidavit reciting these facts, in place of the usual return, unless they hold taxable personal property in some fiduciary capacity, when they make reports in the same manner as individuals.

It will be noticed that *every taxable* must be furnished with a

return blank, and be required to report. The custom has obtained in some counties of only furnishing with blanks those who are known or supposed to have taxable personal property; but this practice is wrong, and every person liable to taxation should be furnished with a blank and required to report, whether he is supposed to have any taxable property or not.

Section 3 of the Act of June 1, 1889, provides that the affidavit required by the preceding section shall be made before the assessor or other person authorized to administer oaths, and punishes any person or officer making a false return.

Section 4 of the Act of June 1, 1889, authorizes assessors to administer oaths, and imposes a penalty for accepting returns not sworn to, and for accepting compensation for administering an oath.

Estimated Returns Made by Assessors. Section 5 is as follows:

"Section 5. That upon the refusal or failure of any taxable person, copartnership, unincorporated association, limited partnership, joint-stock association, or corporation to make a return properly verified by oath or affirmation, as required by this act, within ten days after being notified so to do, it shall be the duty of the assessor to make a return for such taxable person, copartnership, unincorporated association, joint-stock association, limited partnership or corporation, from the best information he can obtain; he shall examine the records and lists of judgments and mortgages, returned by the prothonotary and the recorder of deeds and mortgages, under the seventh and eighth sections of this act, in the commissioners' office or office of the board of revision of taxes or remaining in their respective offices, and assess such defaulting person, copartnership, unincorporated association, joint-stock association, limited partnership or corporation with the amounts of all such liens, with interest thereon, and add thereto the amount of all taxable property obtained from all other sources of information; which return the proper county commissioners or board of revision shall have power, and it shall be their duty, to revise and correct according to the best information they can command from the records in their office or other sources, and it shall be their duty to send for a person, persons, and papers, and to administer an oath or affirmation to him or them in such form as shall be prescribed and supplied by the Auditor-General, to which revised and corrected estimated return the proper county commissioners or board of revision of taxes shall add fifty per centum, and the aggregate amount so obtained shall be the basis for taxation; Provided, that if such taxable person or copartnership, or unincorporated association or company, limited partnership, joint-stock association or corporation, on or before the day fixed for appeals from assessments, shall present reasons supported by oath or affirmation, satisfactory to the proper county commissioners or board of revision,

excusing a failure to make a return such as should be made to the assessors, and shall then make such return, the proper county commissioners or board of revision may substitute such return for that returned by the assessor and corrected as aforesaid, to have like effect as if no failure to return had occurred."

Decisions. A person has the right to refuse to make a return of personal property for purposes of taxation. The act fixes the consequences of refusal. Williamson's Estate, 153 Pa., 50.

The provision requiring parties to make a return of their taxable property, and, in default of so doing, authorizing the assessor to make a return for them from the best information at his command, and further imposing a penalty of fifty per cent. for failure to make the return, is constitutional, inasmuch as an appeal is allowed from the action of the officer imposing the penalty. Fox's Appeal, 112 Pa., 37.

"For an erroneous assessment of tax for State purposes . . . the remedy afforded to a taxpayer on an appeal to the county commissioners is an ample remedy, and may be regarded as exclusive.

"When a taxpayer refusing to make a return of property taxable under said act, by his silence acquiesced in that made by the assessor, and having knowledge of an erroneous assessment, when the day of appeals has passed still refuses, on an application for relief, to make the corrected return authorized by the act, he is without equity to have the collection of the tax restrained by injunction.

"Where the general power to assess for taxes exists, the proper remedy for illegal taxation is by an appeal to those to whom the appeal is required to be taken, and if none be given, the courts cannot revise the judgment of the tax officers." Van Nort's Appeal, 121 Pa., 118.

Section 6 imposes a penalty on assessors and others conspiring to make false returns.

Sections 7, 8, 9, and 10 require the prothonotaries of the courts of common pleas, and the recorders of deeds of the several counties, to keep a daily record of the judgments and mortgages and assignments filed in their offices, respectively, and to furnish a list thereof to the commissioners of their respective counties. The said commissioners are required to furnish the assessors with such lists for comparison with the returns made by the various taxables. The commissioners are also required to furnish the commissioners of other counties with a list of the judgments, mortgages, and assignments of record in favor of residents of such other counties, respectively, for a like comparison by the assessors of such other counties with the returns made by the taxables in whose favor such instruments are made.

Other sections of the Act of 1889, relating to the taxation of personal property, are as follows:

Duties of Assessors and County Commissioners. "Section 11. That it shall be the duty of the *assessor* or *assessors*, in making up their valuations of money at interest in their respective districts, to compare the return made by each person, copartnership, association, limited partnership, joint-stock association or corporation with the statement furnished them by the county commissioners or board of revision of taxes, and if the amount of said mortgages or other obligations as contained in said statement shall exceed the amount set forth in the return of any person, copartnership, association, limited partnership, joint-stock association or corporation, to note the fact and make return of the same to the commissioners or board of revision of taxes of the proper city or county.

"Section 12. That it shall be the further duty of the *county commissioners or board of revision of taxes*, upon the returns made to them by the assessors of the several townships, wards, and boroughs, in all cases where it shall appear on proving the record, that any person, copartnership, association, limited partnership, joint-stock association or corporation has returned a less amount of money at interest than appears from the records in possession of the commissioners or board of revision of taxes, thereupon to raise the valuation of the property of said person, copartnership, association, or limited partnership, joint-stock association or corporation to the amount set forth in said records, and forthwith to notify the persons, copartnerships, associations, limited partnerships, joint-stock associations or corporations interested of the said increase of valuation, and that the same is subject to be appealed from at the same time and in the same manner as the original assessment.

"Section 13. That any *wilful failure* on the part of the *county commissioners, board of revision of taxes, ward, borough, and township assessors, recorders of deeds, prothonotaries and clerks of courts*, to carry out the duties imposed upon them by the several sections of this act, shall be *deemed a misdemeanor*, and upon conviction thereof the person or persons so failing to comply shall be sentenced to a fine not exceeding five hundred dollars and imprisonment not exceeding one year."

Vehicles for Hire Taxable. Section 14, as amended by Section 2 of the Act of June 8, 1891. "That the *county commissioners* or *board of revision* of taxes of each and every county in this Commonwealth are hereby authorized and required, annually, hereafter, at the usual period of making county rates and levies, to assess or cause to be assessed, for the use of the Commonwealth, upon all *stages, omnibuses, hacks, cabs*, and other vehicles used for transporting passengers for hire, except steam and street passenger railway cars, owned, used, or possessed within this Commonwealth by any person or persons or by any corporate body or bodies, *and upon all annuities yielding annually over two hundred dollars, a*

tax of four mills, upon each and every dollar of the value thereof; Provided also, that this section shall take effect on the first day of January, Anno Domini one thousand eight hundred and ninety-two.

"Section 15. That the *Auditor-General shall furnish* to the county commissioners or boards of revision in counties, or cities coextensive with counties, *all necessary books, blanks, notices, and papers* to carry this act into effect."

Return of Portion of Tax to Counties. Section 16, as amended by Section 3 of the Act of June 8, 1891. "That for the year one thousand eight hundred and ninety-two, and annually thereafter, *three-fourths* of the *net amount of tax*, based on the return of property subject to taxation for State purposes required to be made to and accepted by the State Board of Revenue Commissioners, annually, by county commissioners and the board of revision of taxes in cities coextensive with counties, that is collected and paid into the State Treasury by a county, or city coextensive with a county, *shall be returned* by the State Treasurer to such county, or city coextensive with a county, for its own use in payment of the expenses incurred by it in the assessment and collection of the said tax: Provided, that in consideration of the return to counties, and cities coextensive with counties, of the tax as aforesaid, no claim shall be made upon or allowed by the Commonwealth for abatements, tax collectors' commissions, extraordinary expenses, uncollectible taxes, or for keeping a record of judgments and mortgages."*

Collection of the Tax. "Section 17. That the *taxes imposed* upon *personal property* by the first section of this act shall be collected by the several counties and cities, and on the first *Monday of September* shall pay unto the State Treasurer all such sum or sums of money as may then have been collected, and shall on the second *Monday of November* immediately following in each year complete and pay unto the said State Treasurer the whole amount remaining unpaid; and in default thereof it shall be the

* The practice of returning a portion of the State tax on personal property to the counties originated in the following manner: When the entire tax was retained by the State, it was the practice to pay all the expenses of collection of every kind to the counties collecting it, to remit uncollectible taxes, and to pay the expense of keeping the daily record of deeds and judgments, mortgages, etc., required to be furnished by the recorder and prothonotary of each county to the commissioners thereof for use in making assessments. These charges aggregated a considerable sum, and the allowing of the proper credits, and the arriving at the proper amounts to be paid the counties, were matters of great labor and considerable vexation of spirit to the Board of Revenue Commissioners who had charge thereof. It was, therefore, suggested by Auditor-General Norris that, instead of going through all such drudgery every year, the Board should recommend that, in lieu of all such credits and payments to counties, a fixed proportion of the tax should be returned to them annually, the counties to pay therefrom all expenses of every kind connected with the tax. The suggestion was adopted by the Legislature, and the Act of June 1, 1889, provided that one-third of the said tax should be so returned. In 1891, when there appeared to be great danger of the passage of the "Granger" Revenue Bill, then pending, it was agreed, as a sop to Cerberus, to increase the proportion to be returned to three-fourths, which was accordingly done. The one-third granted by the Act of 1889 was given in commutation of payments theretofore made, but the difference between one-third and three-fourths, given by the Act of 1891, was a donation. It will probably be impossible for the Commonwealth ever to discontinue this donation, and reassume its own, no matter how badly it may need revenue.

duty of the Auditor-General to add ten per centum penalty to each county or city on all *taxes remaining unpaid* on the *second Monday of November of each year*, which shall be charged in the duplicate against each delinquent taxpayer in arrears on and after said day; Provided, that city or county treasurers shall be permitted to retain for their own use from the gross sum of money paid by them into the State Treasury the commissions named and prescribed by existing laws."

Borrower not to Pay Tax. "Section 18. That from and after the passage of this act it shall be *unlawful* for *any person* or persons, copartnership, unincorporated association, limited partnership, joint-stock association or corporation whatsoever, *in loaning money* at interest to any person or persons, whether such loans be secured by bond and mortgage, or otherwise, to require the person or persons borrowing the same to pay the tax imposed thereon by the first section of this act; and in all cases where such tax shall have been paid by the borrower or borrowers, the same shall be deemed and *considered usury*, and be subject to the laws governing the same."

Exemption from Local Taxation. The Revenue Acts of 1879, 1881, and 1885 provided that the classes of personal property made taxable thereby for State purposes should be exempted from all local taxation. This provision was omitted from the Revenue Acts of 1889 and 1891, which were, in the main, reenactments of the preceding acts, with amendments. The Act of April 4, 1868 (P. L., p. 61), provided that most classes of personal property now taxable should not be subject to local taxation in certain counties in the State, and there is, therefore, no doubt but that in the counties therein enumerated most of the classes of personal property above enumerated cannot be taxed for local purposes; whether such property can be taxed for local purposes in the counties *not* enumerated in said act may be considered as something of an open question. See *supra*, p. 151. The fact is, however, that this point has never been raised, and that the Acts of 1889 and 1891 have generally been construed as if they contained the same provision exempting personal property from local taxation as was contained in the Revenue Acts of 1879, 1881, and 1885.

The Act of June 1, 1889, was the first to tax the personal property of corporations, the courts having held that the words "any person or persons whatever," used in prior acts, were not inclusive of corporations. See Lehigh Coal and Navigation Company's Appeal, 112 Pa., 360. We have, however, seen that corporations paying a capital stock tax are relieved from the tax on their personal property held by them in their own right.

Assessments made by County Assessors. The assessment of property for the payment of the State tax on personal property is not made by assessors especially appointed for that purpose,

but by the assessors elected in each county for the assessment of county taxes under the Act of April 22, 1846, P. L., 486, Section 2, which provides:

"The commissioners of each and every county shall include in the precepts they shall hereafter issue to the ward, district, or township assessors, the several objects of taxation mentioned in the preceding section, and shall require said assessors to ascertain the amount, description, and value thereof, and make return to them as is now required by law; and the taxes on the said property shall be assessed, levied, and collected in the same manner, and the same proceedings shall be had in relation thereto, as is required by law in the assessment, levy, and collection of State tax on real and personal property, in the several counties respectively."

The tax is based on the returns made to the Board of Revenue Commissioners by the several boards of county commissioners and the Board of Revision of Taxes in Philadelphia, of the amount of personal property taxable in their respective counties. The Board of Revenue Commissioners is constituted, and its duties and manner of proceeding are, as follows:

Board of Revenue Commissioners. The Act of May 24, 1878 (P. L., p. 126) constitutes the Auditor-General, State Treasurer, and Secretary of the Commonwealth a Board of Revenue Commissioners, who are required to meet at Harrisburg at least three times per annum. They are authorized to require from the several boards of county commissioners (and from the Board of Revision of Taxes in Philadelphia) statements, annually, of the aggregate amount and value of all property in their respective cities and counties, subject to taxation for State purposes, to be made to them at least ten days before the time for their meeting. The county commissioners and board of revision of taxes are required to answer, under oath, all interrogatories which may be propounded to them by said Board of Revenue Commissioners. The said board is further required:

"To ascertain and determine the fair and just value of the property of said cities and counties of this Commonwealth made taxable by law, adjusting and equalizing the same as far as possible, so as to make all taxes bear as equally as practicable upon all property made, or hereafter to be made, taxable for State purposes, in proportion to its just value . . . and to ascertain the value of such items and articles of taxation as are liable to a specific tax . . . and when so ascertained to make a statement of the same, assigning to each city and county the quantity and value of taxable property therein, and the quota of tax to be raised therefrom."

On the filing of such statement in the offices of the State Treasurer and Auditor-General, the State Treasurer is required to forthwith transmit to the commissioners and board of revision of taxes a copy of the valuation of the property of said city or county, and

to issue his precept requiring them to assess and collect the State tax, as provided by law, on the property and valuation so ascertained to be liable to taxation.

Any city or county may appeal from the adjustment so made within thirty days after receipt of the record from the State Treasurer, and the board shall then, on thirty days' notice to the city or county appealing, rehear and readjust the said valuation as equity and justice may require, and, if found erroneous, correct the same. An appeal from the final decision of the board lies to the Court of Common Pleas of Dauphin County.

Under the Act of May 24, 1878 (P. L., p. 126), the power of the Board of Revenue Commissioners is limited to the equalization of the valuation of property taxable for State purposes, and it has no authority, where a county has been divided, to apportion a credit allowed by the Commonwealth to the old county, and transfer a part thereof to the new county. Com. *v.* Luzerne Co., 1 Mona., 418; Lack. Co. *v.* Com., 156 Pa., 477.

Payment of the Tax. The State tax on personal property is paid by the tax collectors to the treasurers of the several counties, by whom it is paid, on the issuing of the State Treasurer's precept for that purpose, to the State Treasurer.

The county treasurer is required to collect and remit the State tax to the State Treasurer, but he is not thereby made the agent of the State. He is the agent of the county until the tax is paid to the State Treasurer. Nothing relieves the county from liability to the State for the tax, but actual payment of it to the State Treasurer. Com. *v.* Phila., 157 Pa., 531.

In the collection of the tax on loans the city treasurer is the agent of the city and not of the Commonwealth, and until the tax is paid to the State Treasurer the city is liable for the loss occasioned by the misconduct of the city treasurer. Com. *v.* Phila., 558.

Where a county treasurer is paid an annual salary he is not entitled to commissions for paying over to the Commonwealth the State tax on personal property collected by his predecessor. Centre Co. *v.* Gramley, 155 Pa., 325.

Decisions. Personal property in the hands of an assignee for the benefit of creditors is not taxable. School Directors *v.* Rathvon, 30 Pa., 533.

Money due under articles of agreement for the sale of land is taxable as "money at interest." Voeghtly *v.* School Directors, 1 Pa., 330.

Deposits in banks, which deposits bear interest, are taxable as "accounts bearing interest," but bank deposits not bearing interest are not taxable.

Personal property in the hands of an executor or administrator is taxable. Wister's Estate, 7 Pa. C. C., 325.

Money at interest is taxable at the owner's domicile, and not at

the place where the money is at interest. Dauphin Co. *v.* Banks, 1 Pears., 40.

Mortgages, bonds, etc., are taxable in the hands of the holders, whether they bear interest or not. Perry Co. *v.* Troutman, 144 Pa., 361.

A fund created by will, of which a widow receives the income for life, is taxable, the tax being payable out of the interest on the same. Spangler *v.* York County, 13 Pa., 322. But a widow's dower is not taxable as personal property. Dietz *v.* Beard, 2 Watts, 170. The distinction between these cases seems to be that in the case of a widow's dower there is no certain fund from which it arises. It is paid from the estate, or the income thereof, which may and doubtless does already pay a tax, whereas when a specific fund is set aside for her support, such fund would otherwise wholly escape taxation if it were exempted from the tax on personal property.

Mortgage securities constituting part of the endowment fund of an institution of purely public charity are not taxable. Tax on W. & J. Col. En. Fund, 10 Pa. C. C., 478.

Mutual insurance companies are subject to tax on their personal property. Fire Ins. Co. *v.* County, 9 Pa., 413. So are savings fund societies without capital stock. Phila. S. F. Society *v.* Yard, 9 Pa., 359.

Shares of national banks located in other States are not taxable in Pennsylvania. Tappan *v.* Merchants' National Bank, 22 Wall., 490. As to the taxation of other bank shares see page 97.

Method of Assessment and Collection of the Tax. The following statement gives the various proceedings in the assessment and collection of the tax, in sequence, as they occur, in order to make the subject plain to the reader without requiring him to refer to the provisions of law hereinbefore quoted in this chapter.

The tax on personal property is assessed and collected, as heretofore stated, wholly by county officers, whose duties in connection with the tax are separate and distinct from those connected with their respective counties. The assessment and collection of the tax is under the supervision of three county commissioners of each county, who are elected triennially. In the County of Philadelphia a Board of Revision of Taxes performs the duties elsewhere assigned to county commissioners.

One assessor is elected in each township, ward, or borough (except Philadelphia, where two are appointed for each ward by the Board of Revision of Taxes), who annually make out the complete lists of all taxable persons, and a valuation of all property taxable by law, within their respective jurisdictions.

Blanks are furnished by the Auditor-General to the commissioners of the respective counties (and to the Board of Revision of Taxes in Philadelphia County), by whom they are furnished to the assessors to be distributed to all taxable persons. In some

counties the practice has obtained of furnishing blanks for returns of personal property only to persons whom the assessors think have taxable property to return; but this is in violation of law, as blanks are required to be furnished to *all* citizens subject to taxation, whether the assessor may believe them to have any property to return or not. These blanks must be filled up by the taxpayers and returned, under oath, to the assessor.

Where the taxable neglects or refuses to make a return of his personal property, the assessor estimates such return for him, and to the amount of such estimated return the county commissioners (or Board of Revision of Taxes) add fifty per cent. and assess tax on the amount so arrived at; but the taxable may, at any time on or before the date fixed for appeals from assessments, on making a sufficient explanation of the cause of his failure to make report, to the county commissioners, or Board of Revisions of Taxes, be allowed to substitute his own sworn report for the estimated one, and be taxed upon the basis of said return. Taxables are notified of the day when the commissioners will hear appeals from assessments, and may then appear before the commissioners and endeavor to secure a reduction of their assessments. If this is not granted, they may appeal to the court of common pleas of the county wherein their property is located. Act April 19, 1889 (P. L., p. 37).

On the receipt by the county commissioners (or by the Board of Revision of Taxes, in cities coextensive with counties) of the returns of the several assessors, the values of the property in the particular county (or city coextensive with a county) are tabulated by said commissioners (or Board of Revision of Taxes) and a return of the same, arranged by townships or wards, is made to the Auditor-General, on blanks furnished by that official, within sixty days from the first day of June.

When the returns from all the counties have been received at the Auditor-General's Department, showing the amount of personal property subject to taxation in each county for State purposes, a meeting of the Board of Revenue Commissioners, consisting of the Secretary of the Commonwealth, Auditor-General, and State Treasurer, is held, at which the amount of personal property tax properly collectible from each county is determined, and thereupon the State Treasurer issues his precept to the treasurer of each county, making requisition upon him for the proportion of the personal property tax properly due from his county. Any county not satisfied with their adjustment may appeal to the said board for a rehearing, and if the same is denied them, or if they are dissatisfied with the action of the board on such rehearing, they may appeal to the Court of Common Pleas of Dauphin County, whose decision is final.

Except where otherwise provided by special act of Assembly, a tax collector is elected annually by each borough, ward, or town-

ship. In the city of Philadelphia taxes are paid to a receiver of taxes.

Prior to the making return by the county commissioners (or Board of Revision of Taxes) to the Board of Revenue Commissioners, of the amount of taxable personal property in their respective counties, exonerations may be granted to taxables, on proper cause shown, without loss to the county; but after such return is made all exonerations are at the expense of the county, since tax is required to be collected on the full amount of personal property returned by it.

The entire amount of personal property tax collected by a county is required to be paid into the State Treasury, but the three-fourths thereof, to which it is entitled under Section 3 of the Act of 1891, is soon thereafter returned to it by warrant of the Auditor-General.

In some counties in which special acts are in force, a commission of five per centum was formerly allowed the county for collecting the tax; but since the Acts of 1891 and 1889, returning to the counties a portion of the tax, such commission is no longer paid. The amount paid tax-collectors varies in different counties in which special acts are in operation relating to this subject. The county treasurer receives as a compensation for the collection of the tax one per centum upon the entire amount of tax collected and not merely on the portion of the tax kept by the State. See page 149.

We have already seen what the remedy of a taxpayer is for an erroneous assessment.

Regulations of the Accounting Officers Relative to Returns of Personal Property. 1. Every person twenty-one years of age and upwards, being a resident of or domiciled within this State, and every corporation not specially exempted, and every copartnership or unincorporated association, joint-stock association or company, limited partnership, and copartnership, located or doing business within this Commonwealth, owning or holding any personal property of the classes enumerated in Section 1 of the Act of June 8, 1891, whether the same be held in his, her, or its own right, or as trustee, executor, administrator, guardian, assignee, committee, receiver, or in any other fiduciary capacity for the use and benefit of some other person or corporation, is required each year to make return under oath, of the amount of such property, to the assessor.

2. Property of *minors* is taxable in the name of the guardian.

3. The *domicile* of the taxpayer is where he permanently resides —absence for months or years will not change it so long as there is an intention of returning, and it cannot be lost until another has been acquired.

He is there liable to taxation upon all his personal property, whether it be within or without the State. A temporary residence

in this State renders taxable only so much of his personal property as he has actually within the State.

4. *Blanks* will be furnished each year by the proper assessor to *each taxable person, corporation, company, or association.*

5. The *return* of personal property should be read carefully before making any entries. It must be made out by *answering specifically each question* on page 1 of the lilac blank, inserting the word *none* or the amount taxable, after the question. It must be sworn to before the assessor or some person authorized to administer oaths, and must be *returned* to the proper officer within *ten* days from the date of the delivery of the blank at the dwelling house or place of business of each taxable, as required by law.

6. In case of a taxable not having any personal property taxable receiving a blank, he should answer the questions on page 1 by writing the word *none* opposite each, make oath to the return, and give the same to the assessor, thus avoiding the trouble and inconvenience resulting from the making of an *estimated return* by the assessors, upon information, assessing him on taxable property supposed to be owned by him.

7. In case no return is made within ten days, the *assessors are required* to make one, to which estimated return fifty per cent. is to be added, subject to appeal as provided by law.

Personal Property Not Taxable. Accounts not bearing interest.

Bank accounts not bearing interest.

Bank-notes.

Bank shares, State and savings. (But see p. 97, for a discussion of this subject.)

Bank shares, National. Whether of banks located in Pennsylvania or of those located in other States. Tappan *v.* Merchants' Nat. Bank, 22 Wall.

Dower of widows. See Dietz *v.* Beard, 2 Watts, 170.

Notes discounted or negotiated by banks, banking institutions, savings institutions, or trust companies.

Shares of stock of corporations paying a tax upon capital stock, or expressly exempted from the payment of such tax—*i. e.*, manufacturing corporations; and shares of building and loan associations, for the taxation of which see page 116.

All personal property held in their own right by

National banks. See Gorly *v.* Bowlby, 8 Pa. C. C., 17.

Banks collecting and paying the tax on their shares on or before the first day of March in each year, under the provisions of the Act of July 15, 1897 (P. L., 292).

Building and loan associations, except mortgages and other obligations given by persons or corporations not members of such associations.

Residents of other States, not, however, when held for them by resident trustees.

Institutions of purely public charity.

All obligations of public or private corporations, on which interest is paid, *are exempt from taxation* in the hands of the holders thereof, the tax on the same being deducted from the interest paid thereon, by the treasurers of the corporations issuing them. See Tax on Corporate Loans, *supra*. Whether such obligations should be returned to the local assessors, if no interest is paid thereon during the tax-year, see page 154.

Beside the classes of property above enumerated, all personal property *not specifically* enumerated in the first section of the Act of June 1, 1891, is exempt from the State tax on personal property.

Personal Property Subject to the Tax. The following classes of personal property are subject to taxation, and for convenience, sake, these classes are given exactly as they are enumerated in the Personal Property Return Blank which each taxable has to fill up:

1. FOREIGN SECURITIES—
   Issued by banks, corporations, companies, limited partnership associations, joint-stock associations, firms, or copartnerships of *other* States, Territories, the District of Columbia, the United States, or foreign countries; the bonds or loans of any other State or country aforesaid, or of any county, city, borough, township, or school board thereof, viz.:
   a. *Bonds* (corporate).
   b. *Bonds*, State, county, township, city, borough, or school.
   c. *Bonds.*
   d. *Car-trust securities.*
   e. *Debentures.*
   f. *Mortgages* of *foreign corporations* (of other States) or *non-resident individuals.*
   g. *Shares of stock* of all banks or companies whatever of other States or countries (except shares in National banks).
2. DOMESTIC SECURITIES—
   a. *Bonds* issued by any school district of Pennsylvania.
   b. *Mortgages upon property in Pennsylvania, created or given by individual residents thereof.*
   c. *Shares of stock* of all banks and savings institutions, chartered by Pennsylvania (but see page 97).
3. MONEYS LOANED TO RESIDENTS—
   Moneys loaned to individuals, banks, firms, or partnerships in Pennsylvania, which *loans* or *investments* are represented by
   a. *Mortgages.*
   b. *Judgments.*
   c. *Promissory notes.*
   d. *Penal or single bill.*
   e. *Bond* (except bonds of Pennsylvania corporations which deduct the tax from interest paid).
   f. Other forms of *securities* or *evidences* of *indebtedness.*
4. MONEYS LOANED TO NON-RESIDENTS—
   Moneys loaned to individuals, corporations, companies, banks, firms, copartnerships, limited partnerships or associations, or to counties, cities, townships, or boroughs of *other* States, Territories, the District of Columbia, and foreign countries, *or invested in any business therein*, which loan or investment is represented by
   a. *Mortgages.*
   b. *Judgments.*
   c. *Promissory notes.*

d. Penal or single bill.
e. Bond or any other form of *security* or *evidence of indebtedness* not reported in Section 1.

5. MISCELLANEOUS—
a. Annuities, over $200 (except those granted by the United States).
b. Articles of agreement, including those for the sale of land in this or any other State, Territory, or foreign country.
c. Accounts bearing interest.
d. Stages, etc., stages, omnibuses, hacks, cabs, and other vehicles owned, used or possessed (except steam and street passenger railway cars) for transporting passengers for hire. No. , value.

6. TRUSTEES, EXECUTORS, ETC.—
Personal property held, owned, or possessed as active trustee, trustee, executor, administrator, guardian, assignee, committee, receiver, agent, attorney-in-fact, or otherwise, for the use, benefit, or advantage of other persons or corporations whatsoever, viz.:
a. Bonds of foreign companies or resident individuals.
b. Car-trust securities.
c. Moneys due and owing to me, or us, as trustee, etc., by solven. debtors of this or any other State or country, represented by
d. Mortgages.
e. Judgments.
f. Promissory notes.
g. Penal or single bill.
h. Bond or any other form of security.
i. Or evidence of indebtedness not exempt by law.

Remarks:

Instructions to Taxables as to the Making of Their Returns of Personal Property. The Personal Property Return Blank has been complained of as being too complicated for the ready comprehension of the ordinary taxable. There is certainly a large amount of enumeration in it which might, so far as the return of the average taxable is concerned, have been omitted; but the blank has to be adapted to every kind of a return, of whatsoever taxable personal property, and it is difficult to see how this end could have been attained without making the blank as comprehensive as it is.

When a taxable is furnished with a blank for his return, by the assessor, it would be well for him to make a schedule of his taxable personal property, upon a sheet of paper, before attempting to fill up the blank. If he have money at interest, let him first ask himself how this money is represented, whether by notes, bonds, mortgages, shares of stock, etc. Let him write down the different amounts represented by these different obligations, thus making separate lists of notes, bonds, mortgages, shares of stock, etc. Then let him ask himself, by whom are these obligations given: whether by individuals or corporations, and, if by corporations, whether they are incorporated under the laws of Pennsylvania or by other States; and, if incorporated under the laws of this State, whether they are liable to a tax on capital stock or not. Having thus divided his lists again, he will be in a condition to determine what is or is not taxable, and what should or should not be included in his return to the assessor. He will strike out the

notes discounted by banks, savings institutions, etc., if any. He will strike out all shares of stock in domestic corporations paying a capital stock tax or in domestic manufacturing companies, and so on. Let us suppose a case:

A. B. has $10,000 of "money at interest" (as all investments not in real estate or tangible personal property are usually called), and wishes to know how to make out his personal property return.

Let him, first, proceed, as above directed, to ascertain how this money is represented. He does so, and with the following result:

Notes	$2000 00
Mortgages	1000 00
Bonds	4000 00
Stocks	3000 00

He now proceeds to ascertain by whom, or by what, these obligations were given, and finds as follows:

Notes:	
1. Discounted by banks etc.	$ 500 00
2. Given by a domestic corporation organized for profit	1000 00
3. Given by individual residents of Pennsylvania	500 00
Mortgages:	
4. Given by a domestic corporation organized for profit	$ 500 00
5. Given by a foreign corporation	250 00
6. Given by individual residents of Pennsylvania	250 00
Bonds:	
7. Of domestic corporations organized for profit	$1000 00
8. By foreign corporations	1000 00
9. Given by individual residents of Pennsylvania	2000 00
Shares of Stock:	
10. Issued by domestic corporations paying a capital stock tax or by mfg. corporations	$1000 00
11. Issued by foreign companies	1000 00
12. Issued by banks	500 00
13. Issued by domestic corporations not paying a tax on capital stock	500 00

He is now in a position to determine, by comparing the lists above given with the list of non-taxable personal property on page 169, how much of this property he shall return.

He consults the list and finds that he should not return Item No. 1, as it is not taxable. Neither should he return Item 2, because the corporation, when paying interest on the note, will deduct the tax from such interest, and he does not wish to be taxed twice on the same property.

He returns No. 3, opposite paragraph 3, clause *c*, in the Personal Property Return Blank. He does not return No. 4, for the same reason that he did not return No. 2. He returns No. 5, opposite paragraph 1, clause *f*, in the Return Blank, and he also returns No. 6, opposite paragraph 2, clause *b*, in the return. He does not

return No. 7, for the same reason that he has not returned Nos. 2 and 4. He returns No. 8, opposite paragraph 1, clause *a*. He returns No. 9, opposite paragraph 3, clause *e*, in the blank. He does not return No. 10, but does return No. 11, opposite paragraph 1, clause *g*. As to whether or not he should return No. 12, see page 97 of this book. If he does return No. 12, he does so opposite paragraph 2, clause *c*. He should return No. 13, and for want of a better place to return it, insert it opposite paragraph 2, clause *c*, writing in the words "of domestic companies not paying a capital stock tax, other than manufacturing companies."

If, among the taxable's personal property, he finds articles of agreement, let him report them in paragraph 5, clause *b*; so with accounts bearing interest (paragraph 5, clause *c*). Car-trust certificates should be returned opposite paragraph 1, clause *d*, if issued by a foreign company; opposite paragraph 6, clause *b*, if the certificates are held in trust. Such certificates, as it appears, are not specifically enumerated under the head of "Moneys Loaned to Residents," and must, therefore, be returned, when issued by domestic companies, opposite paragraph 3, clause *f*. Under paragraph 6 is to be returned only personal property held in trust or in some fiduciary capacity, and nothing held by a taxable in his own right should be returned thereunder.

For a correct understanding of the State tax on personal property, the chapter on Tax on Corporate, County, and Municipal Loans, beginning on page 66, should be read in connection with the foregoing.

CHAPTER XIV.

TAX ON COLLATERAL INHERITANCES.

PENNSYLVANIA was the first of the American Commonwealths to lay a tax on collateral inheritances. Its example has since been followed by numerous States, including New York, whose systems have all been modelled on that of Pennsylvania.

As a matter of historical interest, it may be noted that a tax of five per centum on legacies and inheritances was imposed in the Roman world as early as the time of Augustus. This tax was not imposed where the legacy or inheritance was of a certain minimum value, and it was not collected from certain relatives of the father's side, so that, in many respects, it was identical with the Pennsylvania tax. The rate of tax was increased by Caracalla (*circa* 211 A. D.) to ten per centum. See Gibbon's *Decline and Fall*, etc., vol. i., chap. vi., p. 189.

All estates located in Pennsylvania (or located outside of Pennsylvania, when the person seized thereof is domiciled in said State) passing from any person dying seized thereof, either by will or otherwise, to any person other than for the use of father, mother, husband or wife, children and lineal descendants born in lawful wedlock, or the wife or widow of the person dying possessed thereof, which estates are of the clear value of two hundred and fifty dollars, are subject to a tax of five dollars on every hundred dollars of the clear value of such estates.

History. The acts imposing a tax on collateral inheritances are as follows: Act of April 7, 1826, Sec. 1 (9 Smith's Laws); April 22, 1846, Sec. 14 (P. L., p. 489); April 10, 1849, Sec. 16 (P. L., p. 571); March 11, 1850, Sec. 3 (P. L., p. 170); March 31, 1876, Sec. 9 (P. L., p. 15); May 6, 1887 (P. L., p. 79).

The Act of 1887, now in force, is a codification and re-enactment of all prior provisions relative to the tax on collateral inheritances, and is as follows:

"Section 1. That all estates, real, personal, and mixed, of every kind whatsoever, situated within this State, whether the person or persons dying seized thereof be domiciled within or out of this State, and all such estates situated in another State, Territory, or country, when the person or persons dying seized thereof shall have their domicile within this Commonwealth, passing from any person who may die seized or possessed of such estates either by will or under the intestate laws of this State, or any part of such estate or estates or interest therein transferred by deed, grant, bargain, or sale, made or intended to take effect in possession or

enjoyment after the death of the grantor or bargainor, to any person or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, or the wife or widow of the son of the person dying seized or possessed thereof, shall be and they are hereby made subject to a tax of five dollars on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the Commonwealth, and all owners of such estates and all executors and administrators and their sureties, shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed; Provided, that no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the tax or duty."

Executors, accepting bequests, etc., in lieu of commissions, to pay tax on amount above a fair compensation.

Section 2. Where a testator appoints or names one or more executors, and makes a bequest or devise of property to them, in lieu of their commissions or allowances, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a fair compensation for their services, such excess shall be subject to the payment of the collateral inheritance tax; the rate of compensation to be fixed by the proper courts having jurisdiction in the case.

Rate of compensation to be fixed by court.

Persons entitled to reversionary interests need not pay tax, nor be chargeable with interest thereon until actual possession is acquired.

Section 3. In all cases where there has been or shall be a devise, descent, or bequest to collateral relatives or strangers, liable to the collateral inheritance tax, to take effect in possession, or come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate, by the termination of the estates for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid; Provided, that the owner shall have the right to pay the tax at any time prior to his coming into possession, and in such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years; And provided further, that the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid. And the owner of any personal estate shall make a full return of the same to the register of wills of the proper county within one year from the

Tax to be assessed on value at time presentation begins.

Tax may be paid before possession is had.

Bases of assessment.

Tax to remain a lien until paid.

Return of personal estate to be made to register within one year from death of decedent.

And security given.

death of the decedent, and within that time enter into security for the payment of the tax to the satisfaction of such register; and in case of failure so to do, the tax shall be immediately payable and collectible.

When discount of five per cent. to be allowed.

Section 4. If the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of five per centum shall be made and allowed, and if the said tax is not paid at the end of one year from the death of the decedent, interest shall then be charged at the rate of twelve per centum per annum on such tax; but where from claims made upon the estate, litigation, or other unavoidable cause of delay, the estate of any decedent or a part thereof cannot be settled up at the end of the year from his or her decease, six per centum per annum shall be charged upon the collateral inheritance tax, arising from the unsettled part thereof, from the end of such year until there be default; Provided further, that where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto, subject to said tax, has not been or shall not be productive to the extent of six per centum per annum, they shall not be compelled to pay a greater amount as interest to the Commonwealth than they may have realized, or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.

Interest to be charged at twelve per cent. if tax not paid within a year.

When only six per cent. interest to be charged.

No higher interest to be paid than is realized on estate.

Executors to deduct tax from pecuniary legacy or share.

Section 5. The executor, or administrator, or other trustee, paying any legacy or share in the distribution of any estate, subject to the collateral inheritance tax, shall deduct therefrom at the rate of five dollars in every hundred dollars, upon the whole legacy or sum paid; or if not money, he shall demand payment of a sum, to be computed at the same rate, upon the appraised value thereof, for the use of the Commonwealth; and no executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed, as is or may be directed by law; and every sum of money retained by any executor or administrator, or paid into his hand on account of any legacy or

And demand payment in case of specific legacy.

On neglect to pay tax specific legacy or article to be sold.

Money due State to be promptly paid by executors or administrators.

distributive share, for the use of the Commonwealth, shall be paid by him without delay.

Provision when legacy is given for a limited time upon a condition or contingency.

Section 6. If the legacy subject to collateral inheritance tax be given to any person for life, or for a term of years, or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but if not money, application shall be made to the orphans' court having jurisdiction of the accounts of the executors or administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require.

When legacy is charged upon real estate, heir to deduct the tax, and pay to executor.

Tax to remain a lien until paid.

Section 7. Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct therefrom at the rate aforesaid, and pay the amount so deducted to the executor; and the same shall remain a charge upon such real estate until paid, and the payment thereof shall be enforced by the decree of the orphans' court, in the same manner as the payment of such legacy may be enforced.

Executors and administrators to notify the register if real estate subject to tax.

Owners of such estates to notify register.

Section 8. Whenever any real estate of which any decedent may die seized shall be subject to the collateral inheritance tax, it shall be the duty of executors and administrators to give information thereof to the register of the county, where administration has been granted, within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period, within one month after the same shall have come to their knowledge, and it shall be the duty of the owners of such estate, immediately upon the vesting of the estate, to give information thereof to the register having jurisdiction of the granting of administration.

Executors, etc., to take duplicate receipts, one to be forwarded to the Auditor-General, who charges register with tax, and countersigns and returns receipt.

Section 9. It shall be the duty of any executor or administrator, on the payment of collateral inheritance tax, to take duplicate receipts from the register, one of which shall be forwarded forthwith to the Auditor-General, whose duty it shall be to charge the register receiving the money with the amount, and seal with the seal of his office, and countersign the receipt and transmit it to the executor or administrator, whereupon it shall be a proper voucher in the settlement of the estate; but in no event shall an executor or administrator be entitled to a credit in his account by the register, unless the receipt is so sealed and countersigned by the Auditor-General.

Foreign executors to pay tax on bonds assigned.

Section 10. Whenever any foreign executor, or administrator, or trustee, shall assign or transfer any stocks or loans in this Commonwealth, standing in the name of the decedent, or in trust for a decedent, which shall be liable for the collateral inheritance tax, such tax shall be paid, on the transfer thereof, to the register of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax.

Otherwise corporation to pay tax.

When debts are proven after payment of legacies, and legatees refund, a proportion of tax to be repaid.

Section 11. Whenever debts shall be proven against the estate of a decedent, after distribution of legacies from which the collateral inheritance tax has been deducted, in compliance with this act, and the legatee is required to refund any portion of a legacy, a proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the State or county treasury, or by the county treasurer, if it has been so paid.

Register of wills to appoint an appraiser.

Section 12. It shall be the duty of the register of wills of the county in which letters testamentary, or of adminstration, are granted, to appoint an appraiser as often as, and whenever, occasion may require, to fix the valuation of estates which are, or shall be, subject to collateral inheritance tax, and it shall be the duty of such appraiser to make a fair and conscionable appraisement of such estates, and it shall further be the duty of such appraiser to assess and fix the cash value of all anuuities and life estates growing out of said estates, upon which annuities and life estates the collateral inheritance tax shall be immediately payable out of the estate at the rate of such valuation; Provided, that any person or persons not satisfied with said appraisement shall have the right to appeal, within thirty days, to the orphans' court of the proper county or city, on paying, or giving security to pay, all costs, together with whatever tax shall be fixed by said court, and upon such appeal said courts shall have jurisdiction to determine all questions of valuation, and of the liability of the appraised estate for such tax, subject to the right of appeal to the Supreme Court as in other cases.

Duties of appraiser.

Persons not satisfied with appraisement may appeal to orphans' court.

And to Supreme Court.

Penalty for taking fees or rewards by appraisers.

Section 13. It shall be a misdemeanor in any appraiser, appointed by the register to make any appraisement in behalf of the Commonwealth, to take any fee or reward from any executor or administrator, legatee, next of kin, or heir of any decedent, and for any such offence the register shall dismiss him from such service, and upon conviction in the quarter sessions, he shall be fined not exceeding five hundred dollars, and impris-

oned not exceeding one year, or both, or either, at the discretion of the court.

Returns made by appraisers to be recorded.

Section 14. It shall be the duty of the register of wills to enter in a book, to be provided at the expense of the Commonwealth, to be kept for that purpose, and which shall be a public record, the returns made by all appraisers under this act, opening an account in favor of the Commonwealth against the decedent's estate, and the register may give certificates of payment of such tax from said record, and it shall be the duty of the register to transmit to the Auditor-General, on the first day of each month, a statement of all returns made by appraisers during the preceding month, upon which the taxes remain unpaid, which statement shall be entered by the Auditor-General in a book to be kept by him for that purpose. And whenever any such tax shall have remained due and unpaid for one year, it shall be lawful for the register to apply to the orphans' court, by bill or petition, to enforce the payment of the same, whereupon said court, having caused due notice to be given to the owner of the real estate charged with the tax, and to such other person as may be interested, shall proceed, according to equity, to make such decrees, or orders, for the payment of the said tax, out of such real estate, as shall be just and proper.

Register to transmit monthly statements of all returns made by the appraisers to the Auditor-General.

Taxes not paid within year may be collected by proceedings in orphans' court.

On default of payment of tax, citation to issue to parties liable.

Section 15. If the register shall discover that any collateral inheritance tax has not been paid over, according to law, the orphans' court shall be authorized to cite the executors or administrators of the decedent, whose estate is subject to the tax, to file an account or to issue a citation to the executors, administrators, or heirs, citing them to appear on a certain day and show cause why the said tax should not be paid, and when personal service cannot be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county, and if the said tax shall be found to be due and unpaid, the said delinquent shall pay said tax and costs. And it shall be the duty of the register, or of the Auditor-General, to employ an attorney, of the proper county, to sue for the recovery and amount of such tax, and the Auditor-General is authorized and empowered, in settlement of accounts of any register, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of taxes.

Proceedings where personal service cannot be had.

Attorney to be employed.

Section 16. The registers of wills of the several counties of this Commonwealth, upon their filing with the Auditor-General the bond hereinafter required, shall be

Registers of wills to be agents of the Commonwealth for collection of the collateral inheritance tax.

Compensation.

the agents of the Commonwealth for the collection of the collateral inheritance tax; and for services rendered in collecting and paying over the same, the said agents shall be allowed to retain, for their own use, such percentage as may be allowed by the Auditor-General, not exceeding five per centum, on all taxes paid and accounted for; Provided, that this section shall not apply to the fees of registers elected prior to the passage of this act.*

Condition of bond.

Section 17. The said register shall give bond to the Commonwealth in such penal sum as the orphans' court of the county may direct, with two or more sufficient sureties, for the faithful performance of the duties hereby imposed, and for the regular accounting and paying over of the amounts to be collected and received, and said bond, on its execution and approval by the said orphans' court, to be forwarded to the Auditor-General.

To be filed with Auditor-General.

County treasurer to collect tax until register gives bond.

Section 18. Until bond and security be given, as required by the preceding section, the said collateral inheritance tax shall be received and collected by the county treasurer as heretofore, and in such cases all the provisions of this act, relating to collection and payment by registers, shall apply to the county treasurer.

Register to make quarterly returns.

Section 19. It shall be the duty of the register of wills, of each county, to make returns and payment to the State Treasurer of all the collateral inheritance taxes he shall have received, stating for what estate paid, on the first Mondays of April, July, October, and January, in each year, and for all taxes collected by him and not paid over within one month, after his quarterly return of the same, he shall pay interest at the rate of twelve per centum per annum until paid.

In default of payment, interest to be charged at twelve per cent.

Tax a lien until paid.

Lien limited.

Section 20. The lien of collateral inheritance tax shall continue until the said tax is settled and satisfied; Provided, that the said lien shall be limited to the property chargeable therewith; And provided further, that all collateral inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to have been paid and cease to be a lien as against any purchasers of real estate; And provided further, that all taxes due and legally demandable at the date of the passage of this act, the collection of which would be barred by the

Proceedings must be within five years.

* The fees of registers of wills for collecting taxes on collateral inheritances are as follows:
Five per cent. upon the tax collected, if the said tax shall amount to a sum of less than $200,000 in any year;
Four per cent. upon the said tax if the same shall amount to $200,000 and less than $300,000 in any year; and,
Three per cent. upon the said tax if the tax collected shall amount to $300,000, or more, in any year. Act of May 14, 1891 (P. L., p. 59).

provisions hereof, shall not be barred if suit shall be brought therefor within one year from the date of the passage of this act.

Section 21. All laws, or parts of laws, heretofore approved, relating to the collection of the collateral inheritance tax, and inconsistent herewith, be and the same are hereby repealed.

Appraisers of Collateral Inheritance Tax. The Act of June 26, 1895 (P. L., p. 325), provides:

Section 1. That the compensation of a collateral appraiser shall be two dollars for each day and every day on which he shall be actually engaged in making appraisement of property subject to said tax, and the actual, necessary travelling expenses, which expenses shall be itemized in a sworn statement to be returned to the register, subject to the final approval of the Auditor-General.

Section 2 provides for the appointment of expert appraisers wherever the proper appraisement of an estate will require the services of a person possessed of expert or technical knowledge, and to such expert appraisers reasonable additional compensation may be allowed. Such appraisers can only be employed by the consent of the Auditor-General, and the amount of their additional compensation is fixed by that officer. Clerks or other persons employed in the office of a register of wills may not be appointed as expert appraisers, nor as experts to assist appraisers.

Decisions as to Appraisements. An appraisement directed by the register, unappealed from, is conclusive of value only, not of liability of estate to tax. Stinger *v.* Com., 26 Pa., 429.

Appraisement and proceedings thereon must be had in the county where the administration is granted. *Ibid.*

Administrator has no right to appeal from appraisement of real estate; only the heirs can do so. Com. *v.* Coleman, 52 Pa., 468.

An appraisement of the property subject to the tax, made in pursuance of law, and not appealed from, is conclusive upon the Commonwealth. Com. *v.* Freedly, 21 Pa., 33.

In fixing the amount of tax on annuities and life estates, the appraiser should hear testimony as to their probable duration, in connection with the use of the Carlisle Tables; he should also take notice of all facts tending to show the probable net income of the estate. Hass's Estate, 5 Pa. C. C., 583; 19 Phila., 71.

A life interest subject to collateral inheritance tax should be appraised at once, and the tax paid immediately. Budd's Estate, 2 D. R., 148.

Payment to the register pending appeal does not estop the Commonwealth from prosecuting its appeal. Com.'s Appeal, 24 W. N. C., 473.

NOTE.—In using the Carlisle Tables in estimating the value of life estates, it is evident that no estimate can be made on the basis of the

tables unless the person on whose life the estate depends is in good health at the time of the appraisement. If such person should be in the last stages of consumption, it would evidently be absurd to calculate his expectation of life on the basis of the Carlisle Tables.

Tax Cannot be Evaded. The owner of an estate cannot defeat the plain provisions of the collateral inheritance tax law by any device which secures to him for life the income, profits, and enjoyment of his estates. Said law can only be defeated by such a conveyance as parts with the possession, the title, and enjoyment during the grantor's life. Reish, Adm'r, *v.* Com., 106 Pa., 521.

Where in a conveyance or transfer of property during the lifetime of the owner the manifest effects of conditions, covenants, and stipulations in the deed are such as to clothe the grantee with a naked legal right, liable to be defeated at any time by the powers reserved to the grantor, or in case the grantee should die before the grantor, the right of the State to collateral inheritance tax is not thereby defeated. Du Bois' Appeal, 121 Pa., 368.

A transfer of property to take effect at the death of the grantor does not release the same from the collateral inheritance tax. Seibert's Appeal, 110 Pa., 329.

A testator by his will bequeathed his property to certain collateral relatives, and for religious and charitable purposes; subsequently he transferred all his property by deed to the persons named as executors in his will, they to receive the income of the same to their own proper use during life of the testator, and at his death to hold same for the uses and purposes set forth in his will. *Held*, that the estate was liable for collateral inheritance tax. *Ibid.*

The right of the Commonwealth to collect collateral inheritance tax is not defeated by a conveyance or transfer of title to property during the lifetime of the owner, nor by possession taken under such conveyance, if the enjoyment of the property conveyed is not intended to take effect until the death of the grantor. Lines's Estate, 155 Pa., 378.

How Long the Tax Remains Collectible. The proviso in Section 20, Act of May 6, 1887 (P. L., 84), that "all collateral inheritance taxes shall be sued for within five years, . . . otherwise they shall be presumed to have been paid, and cease to be a lien as against any purchasers of real estate," does not extinguish the personal liability of heirs, devisees, and legatees at the end of five years, the proviso being intended simply to quiet the title of purchasers of real estate. Where there is no purchaser to protect, the lien of taxes upon real estate, as well as the debt itself, will continue after five years, notwithstanding that suit is not brought in that time. Cullen's Estate, 142 Pa., 18.

But, after forty-one years, collateral inheritance tax will be presumed to have been paid, not only on the ground of lapse of time, but also from the presumption that the executor did his duty under his oath. Stewart's Estate, 147 Pa., 383.

Who are Subject to the Tax. *Adopted Children.* An act enabling such children to inherit does not relieve them from payment of collateral inheritance tax. Com. *v.* Nancrede, 32 Pa., 389; Thorp *v.* Com., 58 Pa., 500; Com. *v.* Stumps, 53 Pa., 132.

Where A is made the heir-at-law of B by a special act, providing that the said A is "hereby made the heir-at-law of B" "to be capable of inheriting his estate and property as fully to all intents and purposes as if he had been by him begotten in lawful wedlock" (A being an illegitimate son of B), it was *held* that said act was an act of adoption, and not of legitimation, and that a devise to A by B is subject to collateral inheritance tax. Whether if the act had legitimated the son the tax would have been payable, not decided. Com. *v.* Ferguson, 167 Pa., 650. See page 187.

Brothers. Where one brother inherits from another the tax is due. Waugh's Appeal, 78 Pa., 436.

Widow. Where a widow declines to accept under the will, but receives a gross sum by way of compromise, she takes as a widow, and is *not* subject to the tax. Com.'s Appeal, 34 Pa., 204.

A widow is a woman in an unmarried condition, and the widow of a son, afterward marrying, cannot receive an estate devised by the mother of the son without the payment of collateral inheritance tax thereon. Com. *v.* Powell, 147 Pa., 383.

Where the lands of a decedent pass under the intestate laws to his parents for life, and at their death to collateral heirs, the Commonwealth is entitled to the collateral inheritance tax upon the appraised value of the land, less the amount of the decedent's debts unpaid by his personal estate. The acts of Assembly reviewed. Com.'s Appeal, 127 Pa., 435.

What Kinds of Property Tax Payable, or Not Payable, Upon.

Bonds. A bond owing to the testator, which he directs to be cancelled, is subject to the tax. Tyson's Appeal, 10 Pa., 220. But the release of a debt by will, which was already barred by statute of limitations, does not render amount of the same taxable. Stinger *v.* Com., 26 Pa., 429.

United States. U. S. bonds are subject to tax. Strode *v.* Com., 52 Pa., 181. And this is true, although the legatees accept the specific securities. *Ibid.*, 189.

Moneys Paid to Extinguish Adverse Titles. Collateral inheritance tax cannot be imposed upon moneys paid to extinguish the title of persons claiming adversely to the decedent, or upon property surrendered by way of compromise to persons so claiming. Kerr's Estate, 159 Pa., 512.

Collateral inheritance tax is not payable on a sum of money which the legatees, being collaterals, authorized the executors to pay to a disinherited son of the testator, in pursuance of a compro-

mise whereby the son's caveat is withdrawn, and the will admitted to probate. Pepper's Estate, 159 Pa., 508.

Real Estate in Other States. Collateral inheritance is a tax on property, and not merely a succession tax, personal to the person to whom the property is collaterally devised, or by whom it is inherited. Hence the tax cannot be imposed upon realty situated in other States. The domicile of the devisor of such realty is immaterial. Bittinger's Estate, 127 Pa., 338; Com.'s Appeal, 24 W. N. C., 273. But a testamentary direction to executors to sell land works its conversion into personalty. Therefore, where a testator *domiciled in this Commonwealth* devises lands situated without the State to be sold to pay pecuniary legacies, the legacy will pass to the legatee as money, and subject to the law of the testator's domicile, and hence will be subject to collateral inheritance tax. Williamson's Estate, 153 Pa., 508; Miller *v.* Com., 111 Pa., 321.

But, where a testator, without lineal relatives, and *domiciled in another State*, directs that lands situated in this State shall be sold, and that his executors shall "convert the same into money, and apply the proceeds arising therefrom toward the payment" of legacies to collaterals, the proceeds of sale of such lands are *not* subject to collateral inheritance tax. Coleman's Estate, 159 Pa., 231; Miller *v.* Com., approved.

Choses in action of non-resident decedents are not subject to the tax. Del Busto's Estate, 23 W. N. C., 111; Small's Estate, 151 Pa., 1.

Annuities are subject to the tax. For method of computing tax on, see Thompson's Estate, 5 W. N. C., 14.

Miscellaneous Decisions Relative to the Tax. Where there has been such unavoidable delay in the settlement of an estate as to relieve it from the twelve per cent. per annum charge imposed by Section 1, Act of April 10, 1849 (P. L., 572), there is to be imposed, under Section 1, Act of May 4, 1855 (P. L., 425), the six per cent. per annum charge from one year after the decedent's death. Com.'s Appeal, 128 Pa., 603.

The voluntary payment by a legatee of the tax upon a bequest, after and in compliance with a decree of orphans' court, fixing the amount thereof, will not bar the right of the Commonwealth afterward to appeal from the decree for error in not requiring payment of six per cent. charge in addition. *Ibid.*, p. 603.

Where a will gave an estate to testator's widow, upon the express condition that she pay certain legacies to collateral relatives, the gifts to the legatees are direct and subject to collateral inheritance tax. Neiman's Estate, 131 Pa., 346. If, under the terms of the will, the widow has power to appropriate the residuum to her own use during life, with a disposition over, the amount of the collateral inheritance tax, if any, payable thereon, cannot be ascertained until her death. *Ibid.*, p. 346.

Under the collateral inheritance tax act of 1887, the liability to the tax is to be ascertained not only by the amount of the legacy, but by the clear value of the estate passing to persons or bodies corporate not exempt from taxation. Howell's Estate, 147 Pa., 164. In other words, if the legacies, altogether, exceed two hundred and fifty dollars, the whole estate going to collaterals is taxable, although no single legacy may amount to two hundred and fifty dollars.

The Act of May 6, 1887, does not repeal the provisions of the Act of May 4, 1855 (P. L., 4525), imposing a charge of six per cent. where the twelve per cent. charge is not to be enforced. Com.'s Appeal, 128 Pa., 603.

The Act of April 10, 1849, providing that where any person shall die domiciled abroad, his real and personal estate within this Commonwealth shall be subject to the payment of the collateral inheritance tax, must be construed to embrace personal property of a tangible nature, and not mere evidences of indebtedness which have no *situs*, but follow the domicile of the owner. Com.'s Appeal, 11 W. N. C., 492.

The income derived from the estate of a decedent during the first year after his death is not subject to collateral inheritance tax, although, by direction of the decedent's will, added to the principal, and although being an income applied indiscriminately to the payment of expenses. Williamson's Estate, 153 Pa., 508.

Refund of Collateral Inheritance Tax Erroneously Paid. The Act of June 12, 1878 (P. L., p. 206), provides that where any amount of collateral inheritance tax has been or may hereafter be erroneously paid to the register of wills of the proper county, the State Treasurer may, on satisfactory proof rendered to him by the said register of wills of such erroneous payment, refund and pay over to the executor, administrator, person, or persons who have paid such tax in error, the amount so erroneously paid; but all such applications for the refund of such tax must be made within two years from the date of said erroneous payment.

Countersigning of Duplicate Receipts. As already seen, executors, administrators, etc., are required to take duplicate receipts from the register of wills, which duplicate receipts are to be sent to the Auditor-General for entry and countersigning, and no such administrator or executor shall be entitled to a credit on his account by the register unless the receipt is so sealed and countersigned. The object of this is, to furnish the Auditor-General with a meaus of checking the returns of collateral inheritance tax moneys received by the several registers as returned by them.

Whether Moneys Derived from Life Insurance are Subject to Tax. In Vogel's Estate, 1 C. C., 352, the facts were as follows:

Decedent died intestate and unmarried, his only relatives being

a brother and three sisters. At his death he was a member of two beneficial societies, the constitutions of which provided that the money due at the death of each member was payable, first, to his widow and children, and, failing such, to his father, mother, brothers, and sisters; but in no event was it to be paid to an executor or administrator, nor to become assets to pay debts. Provision was made by each society for the payment of $1000, as above stated, so that the brothers and sisters of the deceased were entitled to receive $2000 in equal shares, which Meyer Frank (who happened to be administrator of decedent) collected as attorney in fact for them, being duly authorized so to do by letters of attorney. Desiring to have all claims against their brother's estate satisfied, they directed him to retain a certain amount, and the expenses of the audit, which, being the excess of liabilities over assets, he, as administrator, had actually paid out of his own pocket.

Held, that the balance of said $2000 was not subject to collateral inheritance tax. In his opinion, the Court said:

"That the money upon which the collateral inheritance tax has been directed to be paid never formed part of the decedent's estate, and was not received by the accountant as administrator, is, we think, conclusive against the ruling of the auditing judge. It was not an estate, nor part of an estate, to be enjoyed after the death of a grantor or bargainor, and was not, therefore, within the letter nor the spirit of the Act of April 7, 1826, and its supplements. . . . In the language of Fulmer's Appeal, 6 Nor., 133, this fund 'had never accrued to the decedent, had never been claimed by him, and had never been subject to his control. . . . It never, for a moment, became part of his estate, which his heirs could, on any ground, or by any device, absorb.' No amount of reasoning will make out of a scheme like this, which is intended to benefit the family of a person . . . a conspiracy to evade the law relating to collateral inheritance tax."

It would seem as if the above reasoning would apply to almost any case of simple insurance for the benefit of wife, child, or other member of a family; but it is evident that such reasoning will *not* apply to cases of endowment policies, which are merely a form of investment, the insurance feature in which is only an incident thereof. In the case of an endowment policy the assured has a complete estate in the policy during his lifetime, can exercise absolute control over the moneys represented by it, and this control only terminates with his death. To hold that moneys derived from such life insurance are not taxable would at once open the door to frequent and deliberate evasions of the tax.

A policy of insurance upon the life of a decedent, payable to his executors, administrators, and assigns, or to his personal representatives, is, of course, subject to the tax. Knoedler's Estate, 140 N. Y., 377; 35 N. E., 601.

The author has not gone as thoroughly into the subject of col-

lateral inheritance tax as he might have done, owing to the fact that Dos Passos's *The Law of Collateral and Direct Inheritance, Legacy, and Succession Taxes*, published by the West Publishing Company, of St. Paul, Minn., treats the subject at length; and for further information upon this subject the reader is referred to that work.

Special Acts Conferring "All Rights of a Son," Relieve from Tax. The special Act of March 14, 1873 (P. L., p. 290), entitled "An act to confer upon Matthias H. Henderson all the rights, powers, and privileges of a son of Branton H. Henderson," gives sufficient notice in its title of the provision, in the second section, that whatever estate Matthias should take from Branton should be "subject only to such tax as would be payable if the said Matthias were the son of said Branton H. Henderson."

This act was passed when uniformity of taxation was not required by the Constitution, and hence is constitutional, and relieves Matthias H. Henderson from collateral inheritance tax on the property devised and bequeathed him by Branton H. Henderson. Com. *v.* Henderson, 172 Pa., 135.

CHAPTER XV.

DIRECT INHERITANCE TAX.

THE Act of May 12, 1897 (P. L., p. 56), provides for a tax of two dollars on every hundred dollars of the clear value of all *personal property* passing by will, or by the intestate laws of the State, from any person dying possessed thereof, while a resident of this State (or, if the decedent was not a resident of this State, then of so much of such property as may be within this State), to any person or persons whatever; provided, however, that personal property so passing to the value of five thousand dollars shall be exempt from the tax therein provided.

This being a wholly new tax, which has as yet gone into operation only to a limited extent, but little can be here stated with relation thereto. The constitutionality of the tax has been raised upon two grounds:

1. That it is not uniform, in that only estates of a greater value than five thousand dollars are taxed, and

2. Because of the provision in the act creating the tax that

"So much of the estates of persons heretofore deceased as has not been actually distributed and paid to persons entitled thereto prior to the passage of this act shall be liable to the tax imposed by this law, as well as the estates of persons who die hereafter."

The first objection goes to the validity of the whole tax; the second only relates to a provision in the act which might well be declared invalid without affecting the validity of the measure as a whole.

It will be observed that the acts creating the tax on collateral inheritances, which tax was considered in the last chapter, all provide for the exemption of estates of a less clear value than two hundred and fifty dollars. It is true that these acts were mainly passed before the adoption of the present State Constitution, but it is also true that the existing act, under which the tax on collateral inheritances is now collected, was passed since the adoption of the said Constitution. If, therefore, the exemption of estates of five thousand dollars and under is to render the direct succession tax unconstitutional, it is hard to see why the exemption of estates of less than two hundred and fifty dollars should not make the collateral inheritance tax unconstitutional, also. If the old acts relating to the tax on collateral inheritance tax had been allowed to stand, the tax, with the provision referred to, would doubtless have been allowed to stand, also, since the Constitution

might have been assumed not to apply to a tax already in existence at the time of its adoption, and which had then been in force for nearly a half-century; but when those acts were superseded by the Act of 1887 there is no question but what that act came as thoroughly within the provisions of the Constitution as if the subject with which it deals were then first legislated upon.

A statement of the litigation already had, relative to this tax, with the arguments for and against the constitutionality of the act, is given further on in this chapter.

Under an opinion of the Attorney-General, the registers of wills of the several counties are proceeding to collect the tax, as if there were no questions of the final validation of the tax.

The following is the text of the act:

(Act of May 12, 1897; P. L., p. 56.)

Section 1. *Be it enacted, etc.*, That from and after the passage of this act all personal property of whatsoever kind and nature which shall pass by will, or by the intestate laws of this State, from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State, or if the decedent was not a resident of this State at the time of his death, such property, or any part thereof, within this State, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale, or gift made in contemplation of the death of the grantor, bargainor, donor, or assignor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or the income thereof, shall be and is hereby made subject to a tax of two dollars on every one hundred dollars of the clear value of such personal property, after deducting the debts of decedent and costs of administration, and at and after the same rate for any less amount, to be paid for the use of the Commonwealth; and all heirs, legatees, devisees, administrators, executors, and trustees shall only be discharged from liability for the amount of such taxes, the settlement of which they may be charged with, by paying the same for the use aforesaid as hereinafter directed; Provided, that personal property to the amount of five thousand dollars shall be exempt from the payment of this tax in all estates; And provided further, that so much of the estates of persons heretofore deceased as has not been actually

All personal property which shall pass by will, etc., shall be subject to tax.

And property transferred by deed, grant, etc.

Rate of tax.

Deductions for debts and costs.

When parties can be discharged.

Personal property to the amount of $5000 exempt from tax.

Estates not actually settled subject to this tax.

distributed and paid to persons entitled thereto prior to the passage of this act, shall be liable to the tax imposed by this law, as well as the estates of persons who die hereafter.

Discount of five per cent. allowed if paid within three months after death of decedent.

If not paid within one year interest to be added.

Rate of interest.

Section 2. If the said tax shall be paid within three months after the death of the decedent, a discount of five per centum shall be made and allowed, and if the said tax is not paid at the end of one year from the death of the decedent, interest at the rate of six per centum shall be charged for such year, and after the expiration of one year from the death of the decedent, interest shall then be charged at the rate of twelve per centum per annum on such tax; but where, from claims made upon the estate, litigation, or other unavoidable cause of delay, the estate of any decedent or a part thereof cannot be settled up at the end of the year from his or her decease, six per centum per annum shall be charged upon the said tax arising from the unsettled part thereof from the end of such year until there be default; Provided further, that where personal estate, withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto subject to said tax, has not been or shall not be productive to the extent of six per centum per annum, they shall not be compelled to pay greater amount as interest to the Commonwealth than they may have realized or may realize from such estate during the time the same has been or shall be withheld as aforesaid.

Proviso.

Two dollars on every $100 shall be deducted for use of Commonwealth.

Duty of executors, etc.

Upon refusal of legatee to pay tax, legacy, etc., may be sold.

Distribution of balance after payment of tax.

Section 3. The executor or administrator or other trustee, paying any legacy or share in the distribution of any estate subject to the said tax, shall deduct therefrom at the rate of two dollars in every hundred dollars upon the whole legacy or sum paid, or if not money he shall demand payment of a sum to be computed at the same rate upon the appraised value thereof, for the use of the Commonwealth; and no executor or administrator shall be compelled to pay or deliver any specific legacy, or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law, and every sum of money retained by any executor or administrator, or paid into his hands on account of

any legacy or distributive share, for the use of the Commonwealth, shall be paid by him to the proper officer without delay.

Payment of tax where legacy is given upon a condition or contingency.

Section 4. If the legacy subject to said tax be given to any person for life, or for a term of years, or for any other limited period upon a condition or contingency, if the same be money the tax thereon shall be retained upon the whole amount, but if not money, application shall be made to the orphans' court having jurisdiction of the accounts of the executors or administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require.

Duty of heirs when legacy is charged upon real estate.

Section 5. Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct therefrom at the rate aforesaid and pay the amount so deducted to the executor, and the same shall remain a charge upon such real estate until paid; and in default of the payment thereof, the same shall be enforced by the decree of the orphans' court in the same manner as the payment of such legacy may be enforced; Provided, that all taxes imposed by this act shall be a lien upon the personal property of the estate on which the tax is imposed, or upon the proceeds arising from the sale of such property, from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the Commonwealth.

In default of payment orphans' court may enforce same.

Proviso.

Executors shall take duplicate receipts.

Shall forward one to Auditor-General.

Duty of Auditor-General.

Section 6. It shall be the duty of any executor or administrator on the payment of said tax to take duplicate receipts from the register, one of which shall be forwarded forthwith to the Auditor-General, whose duty it shall be to charge the register receiving the money with the amount, and seal with the seal of his office and countersign the receipt and transmit it to the executor or administrator, whereupon it shall be a proper voucher in the settlement of the estate; but in no event shall an executor or administrator be entitled to a credit in his account by the register unless the receipt is so sealed and countersigned by the Auditor-General.

Duty of foreign executors under this act.

Section 7. Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or loans in this Commonwealth, standing in the name of the decedent or in trust for a decedent, which shall be liable for the said tax, such tax shall be paid on the transfer thereof to the register of the county where

such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax.

Manner of refunding tax when debts are proven against estate after distribution of legacies.

Section 8. Whenever debts shall be proven against the estate of a decedent after the distribution of legacies from which the direct inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of a legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the State Treasury, or shall be refunded by the State Treasurer if it has been so paid therein.

Register of wills shall appoint appraiser when required.

Section 9. It shall be the duty of the register of wills of the county in which letters testamentary or of administration are granted, to appoint an appraiser, as often as and whenever occasion may require, to fix the valuation of estates which are or shall be subject to direct

Duty of appraiser.

inheritance tax, and it shall be the duty of such appraiser to make a fair and conscionable appraisement of such estates, and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estates growing out of said estates, upon which annuities and life estates the direct inheritance tax shall be immediately payable out of the estate at

Proviso.

the rate of such valuation; Provided, that any person or persons not satisfied with said appraisement shall have the right to appeal within thirty days to the orphans' court of the proper county or city, on paying or giving security to pay all costs together with whatever tax shall be fixed by said court, and upon such appeal said courts shall have jurisdiction to determine all questions of valuation and of the liability of the appraised estate for such tax, subject to the right of appeal to the Supreme Court as in other cases. The

Compensation of appraiser.

compensation of appraisers appointed under this act shall be at the rate of three dollars ($3.00) per day for each day necessarily employed in making the appraisement, together with such necessary travelling expenses

Sworn statement of expenses to be made, and approved by Auditor-General.

as may be incurred, a statement of which shall be properly itemized and sworn to, subject to the final approval of the Auditor-General before payment is made by the register of wills.

Appraiser taking any fee or reward shall be dismissed and be guilty of a misdemeanor.

Section 10. It shall be a misdemeanor for any appraiser, appointed by the register to make any appraisement in behalf of the Commonwealth, to take any fee or reward from any executor or administrator, legatee, next of kin, or heir of any decedent, and for any such

Penalty.

offence the register shall dismiss him from such service,

and upon conviction in the court of quarter sessions he shall be fined not exceeding five hundred dollars, and imprisoned not exceeding one year, or both, or either, at the discretion of the court.

Register of wills shall keep a record of appraiser's returns.

Section 11. It shall be the duty of the register of wills to enter in a book to be provided at the expense of the Commonwealth, to be kept for that purpose, and which shall be a public record, the returns made by all appraisers under this act, opening an account in favor of the Commonwealth against the decedent's estate; and the register may give certificates of payment of such tax from such record; and it shall be the duty of the register to transmit to the Auditor-General on the first Monday of each month a statement of all returns made by appraisers during the preceding month, giving the name of the estate and clear valuation thereof, subject to the foregoing tax, and the amount of the tax, which statement shall be entered by the Auditor-General in a book to be kept by him for that purpose. And whenever any such tax shall have remained due and unpaid for one year, it shall be lawful for the register to apply to the orphans' court by bill or petition to enforce the payment of the same; whereupon said court, having caused due notice to be given to the owner or owners of the estate charged with the tax, and to such other person or persons as may be interested, shall proceed according to equity to make such decrees or orders for the payment of the said tax out of such estates as shall be just and proper.

And give certificates of payment.

And report to Auditor-General.

Orphans' court may, upon petition of register, enforce payment of taxes unpaid for one year.

If executors, etc., do not pay tax, court shall issue citation, etc.

Service of citation.

Section 12. If the register shall discover that said tax has not been paid according to law, the orphans' court shall be authorized to cite the executors or administrators of the decedent, whose estate is subject to the tax, to file an account, or to issue a citation to the executors, adminstrators, legatees, or heirs, citing them to appear on a day certain and show cause why the said tax should not be paid; and when personal service cannot be had, notice shall be given for four weeks once a week in at least one newspaper published in said county; and if the said tax shall be found to be due and unpaid, the said delinquent shall pay said tax, interest, and costs. And it shall be the duty of the Auditor-General to employ an attorney of the proper county to sue for the recovery and amount of such tax, and the Auditor-General is authorized and empowered in settlement of accounts of any register to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of said tax.

Auditor General shall employ attorney when necessary, etc.

Register of wills, upon filing bond, shall be the agent of the Commonwealth.

Section 13. The registers of wills of the several counties of this Commonwealth, upon their filing with the Auditor-General the bond hereinafter required, shall be the agents of the Commonwealth for the collection of the said tax; and for services rendered in collecting and paying over the same, the said agents shall be allowed

Compensation.

to retain for their own use such percentage as may be allowed by the Auditor-General, not exceeding three per centum on all taxes paid and accounted for.

Register shall give bond with sufficient surety.

Section 14. The said register shall give bond to the Commonwealth, in such penal sum as the Auditor-General shall fix, with sufficient surety, for the faithful performance of the duties hereby imposed, and for the regular accounting and paying over of the amounts to be collected and received, and said bond, on its execution and approval by the orphans' court of the proper county, shall be forwarded to and kept by the Auditor-General.

Register shall make returns and payment on first Monday of each month.

Section 15. It shall be the duty of the register of wills of each county to make returns and payment to the State Treasurer of the taxes under this act he shall have received, stating for what estate paid, on the first Monday of each month; and for all taxes collected by him and not paid over to the State Treasurer within ten

Penalty for non-payment.

days after said monthly return of the same, he shall pay interest at the rate of twelve per centum per annum until paid.

This act shall be known as the "Direct Inheritance Tax Law."

Shall not change existing laws for the collection of collateral inheritance taxes.

Section 16. This act shall be known as the Direct Inheritance Tax Law, and shall not be held to change, modify, or alter the existing law in reference to the collection of collateral inheritance taxes, it being the intention of this act to impose a direct inheritance tax on all estates or parts of estates not subject to the act or acts providing for the collection of collateral inheritance taxes.

Very soon after the passage of the act above given, creating it, this tax was declared unconstitutional by Judge Hanna, of the Orphans' Court of Philadelphia County, in the case of the Blight Estate, 19 C. C., 225, and by Judge Penrose, of the same court, in the case of the Portuondo Estate, 19 C. C., 419. On July 24, 1897, however, Judge Ashman, of the same court, maintained the validity of the tax in the matter of the adjudication of the executor's account in Lacey's Estate, 19 C. C., 431. His opinion was as follows. After commenting upon some minor defects in the phraseology of the act, he says:

Opinion of Judge Ashman, Holding the Tax to be Constitutional. "The features of the act which call for special attention

are: 1. The proviso to the enactment by section one of a tax upon all personal property passing by will or intestacy to others than collaterals, that property to the value of five thousand dollars shall be exempt from the tax in all estates. 2. The provision that so much of the estates of persons theretofore deceased as has not been actually distributed before the passage of the act shall be liable to the tax. And 3. The conditions as to the payment of the tax. Starting with the first, does the five thousand dollars exemption violate that article (ix.) of the Constitution which prescribes that all taxes shall be uniform upon the same class of subjects, and all exemptions of property other than that used for governmental and charitable purposes, etc., shall be void? The question is one which concerns the form rather than the substance of the enactment. Uniformity in the taxation of estates requires that all estates of the same character shall be taxed in the same ratio; and it permits one-half or any other fraction of all estates of that character to be taxed. The result in the last two cases would be to exempt the remaining fraction of each estate from the burden which was imposed upon the other portion. What more or less than this will be accomplished by this statute? Whatever may be said of its phraseology, its meaning is clear: to levy a tax upon that part of the personal estates of all decedents in excess of a valuation of five thousand dollars, where such estates are not liable to the collateral inheritance tax. The proposition now sought to be established may be best illustrated by contrasting it with another. The Constitution of Ohio (Art. ii., Section 26) ordains that 'all laws of a general nature shall have a uniform operation throughout the State.' By the Act of April 20, 1894, imposing a direct inheritance tax, the property of a decedent which should exceed twenty thousand dollars in value was taxed one per cent. of its entire value; so that while an estate of twenty thousand dollars was exempted from all burden, an estate which was one dollar in excess of that value was taxed two hundred dollars. In State *v.* Ferris, 53 Ohio, 314, the act was held unconstitutional for doing the reverse of what the Pennsylvania statute has done—that is, for taxing the entire estate where it exceeds the given sum, instead of taxing only the excess above the sum. The court say: 'The right to receive the first twenty thousand dollars of an estate not exceeding that sum is protected from taxation, while the right to receive the first twenty thousand dollars of an estate exceeding that sum is taxed the sum of two hundred dollars. This is not equal taxation.'

"For another reason, the tax is not comprehended within the terms of the article of the Constitution declaring void all laws exempting from taxation 'property other than public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.' It is not a tax upon property

at all, but upon the right of succession to property, and it belongs to a province wherein it is difficult to assign any limit to the law-making power. The right by which an owner may protect his title to property beyond the period of his own life, and by which, in virtue of kinship, an heir may come into the enjoyment of his ancestor's estate, is not a natural but a statutory right. Respecting the bestowal or the withholding of that right, the Constitution has set no bounds whatever to legislative action, and it is hardly possible that it could do so. The Legislature may at its own volition recognize new classes of inheritable blood, and it may vary the inheritable capacity of existing classes, and it may impose the conditions upon which inheritors shall take. These conditions are always based upon a standard of property values, but they are attached, nevertheless, to the right and not to the property. The only apparent limitation to the law-making prerogative in this respect is found in the general principle that it can raise a revenue only for public purposes; and no scheme of taxation would be lawful which should transcend those purposes. The distinction may be subtle, but it is plain, between a license to succeed to the possession of property and a tribute exacted from the property itself; it is precisely the distinction which obtains between the franchise of a corporation and its buildings and stock. For reasons of public policy, the Legislature may lawfully exempt whole classes of lineal inheritors from the payment of tribute, and in so doing it has regard to the instinct which prompted the ancestor to provide for his offspring. So it may with equal legality tax whole classes whose remoteness in blood from the decedent precludes the thought that he accumulated his estate with a view to their benefit. Laws imposing a tax upon the right of collateral kindred to succession are in force in most of the States, and their validity in operating only upon that class of persons has never, it is believed, until this day at least, been questioned. In Pennsylvania, the law exempts from the tax all estates valued at less than two hundred and fifty dollars, coming to distributees as collaterals. Beneficently intended as that provision undoubtedly was, it would be within the inhibition of the Constitution against all exemptions of property not expressly excepted by that instrument, if the tax was a tax upon property and not upon the right of succession to property. So that, even conceding the accuracy of the theory that the Act of 1897 exempts estates of five thousand dollars and under from liability to the tax which it imposes upon larger estates, it is, nevertheless, true that its provisions in this regard are not an exemption of property from taxation within the terms of the Constitution. It is not worth while to cite many authorities in support of this position. In Brettun *v.* Fox, 100 Mass., 234, it is said: 'The power to dispose of property by will is neither a natural nor a constitutional right, but depends wholly upon statute, and may be conferred, taken away, or limited and regulated, in

whole or in part, by the Legislature.' In Minot *v.* Winthrop, 162 Mass., 118, the court say: 'Taxes on legacies and inheritances, or on succession in any form to property, on the death of the owner, have generally been considered not as taxes upon property, but as excises upon the privilege of taking or transmitting property in this way.' The same point was made in Scholey *v.* Rew, 23 Wall., 331.

"The fate of this estate rests mainly, however, upon the effect to be given to the section of the act which deals with estates of decedents who died before the act was originated, and with the provision of Section 2, which allows upon the tax, when paid within three months after the death of the decedent, a discount, and imposes, when the tax is not paid at the end of a year from the death, interest at six per cent. for the year, and at twelve per cent. per annum for any period beyond it. If Section 2 applies to the undistributed estates mentioned in the former section, then such estates cannot share in the benefit of the discount, and may be subjected to a penalty which might in some instances work confiscation. The present decedent died in 1896, and her estate, which is still undistributed, is subject to the tax; but the rebate allowed for the payment of the tax within three months after the death is an impossible privilege, because the time had already expired when the act began to operate. To make the act apply, however, to such a case, it would be necessary to write words into this clause which the framers of the statute never intended to write, and which, if inserted, would have convicted the authors of imbecility. The section does not say that a discount will be allowed or a penalty inflicted upon estates of decedents who died before its passage. It would have been well, on the score of clearness of expression, if the section had been made in terms to apply only to estates of future decedents; but the draftsman of the act may have reasoned with plausibility that it would be mere verbiage to say that future decedents alone were intended, when it was manifest from the language of the section that past decedents could not have been; in other words, when one of the conditions set out in the section was impossible and the others were unjust and absurd, if they referred to estates whose owners died before May, 1897. How could a tax, which was not imposed until 1897 be paid within three months of the death of a taxable party which took place in 1895?

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"The remaining, and, so far as this estate is concerned, perhaps the most important question, is opened by the proviso in Section 1: 'That so much of the estates of persons heretofore deceased as has not been actually distributed and paid to persons entitled thereto prior to the passage of this act shall be liable to the tax imposed by this law as well as the estates of persons who die hereafter.' Conceding everything to the literal constructionist, this is retroactive legislation, but a retroactive law which is not expressly

forbidden by the Constitution (and there is no such constitutional prohibition in Pennsylvania except as to *ex post facto* laws and laws impairing the obligation of contracts) may be valid. The cases are collected and the point is discussed by Mr. Cooley in his chapter on retrospective laws: Cooley's Con. Lim., 369, etc. It is conceded that a retroactive law cannot be permitted to infringe upon rights which were vested before it came into existence. A statute may enact that all deeds to be valid must have the signatures of three attesting witnesses, but it may not declare that deeds which were executed before its passage without that formality shall be void, because that provision would destroy the vested rights of many land owners who hold title under such deeds. But what vested right can a man be said to have in anything, not expressly exempted by statute, which may not be the subject of taxation? The right of succession to esates aggregating millions of dollars in value, whose owners died before the passage of this act, is vested in persons many of whom will not come into possession of their interests for years to come. What superior equity have they over claimants to the estates of later decedents whose interests may fall into possession at the same time with their own? Or will such an equity accrue to them because of the accident that other persons interested with them in the same estates have received their distributive shares? Short's Estate, 16 Pa., 63, was the case of a person whose estate at the time of his death was not subject to taxation because it was not within the State, and yet was made subject by the retroactive force of a subsequent statute. In deciding the statute to be constitutional, Gibson, C. J., said: 'More pointed words to make the act retrospective as well as prospective could not have been chosen; and it will scarcely be said the Legislature had not power to make it so, at least as to assets remaining in the hands of the executor or administrator. No clause of the Constitution forbids it to extend a tax already laid or to tax assets not taxed before; and in establishing its peculiar interpretation it has only done indirectly what it was competent to do directly. The argument has been that we ought not to give the act a retroactive effect unless we are forced to do so by the stringency of its words. But certainly no injustice is done by increasing a tax to meet an increase of the public burden.' What was there said of the Constitution as it then stood is equally applicable to the Constitution of 1874. The case has never been overruled; on the contrary, while the exact matter now under discussion was not in issue, the case was affirmed without qualification by Sterrett, J., in Orcutt's Appeal, 97 Pa., 179. Certainly the vested rights of the legatees in that instance, whose shares when they vested were free of taxation, were at least as sacred as the rights of the distributees in this estate. But a reason stronger than it was possible to advance in that case, for the statute then under consideration, exists in favor of the present legislation, in virtue of which the Act of 1897 can

only by a sort of misnomer be styled retroactive at all. The reason is this: the Act of March 11, 1850, which was the subject of Chief Justice Gibson's opinion, drew no line between interests which had come into the actual possession of their owners before its passage and those which accrued thereafter, and as to the former was clearly retrospective; the Act of May 12, 1897, applies only to interests which shall fall into possession from and after its date, and of necessity operates prospectively, and only prospectively, throughout. It may be objected, finally, to the provision under review, that the imposition of the tax upon those distributees only of estates of decedents dying before the act who have not been paid their shares, is not uniform taxation within the meaning of the Constitution. The answer seems to be that the Legislature may in its absolute discretion create new classes as the objects of taxation, and may determine the composition of those classes by purely arbitrary distinctions. It may tax estates in possession or estates in expectancy, or it may tax fractional interests in those estates. It may group into classes persons as well as things. It may even tax subdivisions of classes, selecting, for instance, out of the large family of brokers, only those who deal in real estate: Pittsburg *v.* Coyle, 165 Pa., 61. It may impose a tax on all persons who have any property whatever, as distinguished from paupers who are a charge upon the public purse and are unable to pay. So it may tax those whose right of succession to a decedent's estate is valuable because it entitles them to receive a share of that estate, although it leaves untaxed others whose right of succession is worthless, because its benefits have been already exhausted. The argument upon which the objection is founded is, of course, not that the right of succession cannot be taxed in 1897, because it accrued in 1896, and was then free from taxation. Such an argument would ignore the fact that the right still existed in 1897, and, like any other taxable right, could still be assessed by the taxing power. But the argument is that, under that right, the person who received his share in 1896 is exempt from the burden which is placed upon the person whose share is still unpaid. The difference between these individuals, however, is simply this: that the one is vested with a right which has a present value, and the other with a right which has none. As between the two, the government selects for taxation the owner of value. The whole effect of this act is to enroll in one class all persons (not collateral relatives of decedents) whose inheritances are yet to vest in possession, without regard to the time at which the right to inherit originated. The only prerequisite to the constitutional exercise of this power of classification is that the tax shall be uniform as to its subject matter within this class. The Legislature possessed the right before the present Constitution was adopted, and that its authority in this respect was not taken away by that instrument was expressly decided in Roup's case, 81 Pa., 211. The question of legality is not to be deter-

mined by any considerations of the possible hardships which in some instances may result from the operation of the act. The language of Judge Cooley is here instructive. He says: 'It is not essential to the validity of taxation that it be levied according to the rules of abstract justice. . . . Absolute equality and strict justice are unattainable in tax proceedings. The Legislature must be left to decide for itself how nearly it is possible to approximate so desirable a result. It must happen under any tax law that some property will be taxed twice, while other property will escape taxation altogether.' Cooley's Con. Lim., 513."

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Appeals having been taken in all three of the case cited, the question of the constitutionality of the tax was considered by the Orphans' Court of the County of Philadelphia, sitting *in banc*, and on December 4, 1897, opinions were handed down by two of the three justices, adverse to the constitutionality of the tax, Judge Ashman filing a dissenting opinion. The opinions are thus reported by the Philadelphia *Press:*

"Judge Ferguson commences the opinion of the Court by saying that the inherent right of the Commonwealth to tax every species of property cannot be doubted. Nor can it be doubted that the Commonwealth has the right to tax that which is not property in actual possession, but in expectancy by devolution upon the death of one person to others. There can be now no question of the right of the Commonwealth to tax estates passing to heirs whether collateral or lineal, provided that the act by which it is done does not violate any established rules for the construction of statutes or the Constitution of the State.

"Therefore, the right of the Legislature to pass the Act of May 12, 1897, entitled 'An act taxing gifts, legacies, and inheritances in certain cases and providing for the collection thereof,' must be considered as an act properly within the power of the Legislature to enact. The purpose of this act is to impose a tax upon succession to personal property. By the enacting clause it is provided 'That from and after the passage of this act all personal property of whatsoever kind and nature which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same, shall be and is hereby made subject to a tax of two dollars on every one hundred dollars of the clear value of such personal property,' etc.

"If the act had stopped here there could have been no question as to its validity, but there are two provisos added to this enacting clause which are the objectionable features. First, 'Provided, that personal property to the amount of five thousand dollars shall be exempt from the payment of this tax in all estates.' Second, 'Provided, that so much of the estates of persons heretofore deceased as has been actually distributed and paid to persons entitled thereto prior to the passage of this act, shall be liable to the tax

imposed by this law, as well as the estates of persons who die hereafter.'"

The court holds that the second proviso does not restrain or limit or explain the enacting clause, but that it enlarges the subjects of taxation other than those contemplated by it, and extends the provisions of the act to other subjects which could not possibly be covered by the enacting clause. It is pointed out that the clause provides only for the taxation of personal property which shall pass by will or the intestate laws from and after the passage of the act, and that the proviso imposes the tax upon so much of the estates of persons heretofore deceased as has not been distributed.

Regarding this, it is stated in the opinion: "Thus the subjects of taxation are extended to an indefinite limit, and so much of the estates of persons who may have died fifty years ago as has not been distributed is made liable for this tax. This retroactive feature of the act is most objectionable because it interferes with vested rights. While such legislation may be lawful, it is not looked upon with favor."

After citing a number of authorities, Judge Ferguson continues: "But there is a more serious objection to this act. Article IX., Section 1, of the Constitution of Pennsylvania, provides that: 'All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.' This tax is not uniform, but is unequal in many particulars; for instance, by the said second proviso to the enacting clause, if the views already expressed are correct, it is attempted to impose a tax upon property and not upon the right of succession thereto. Now, why should a tax be imposed upon property acquired by will or descent, and other property acquired by gift or purchase escape? Thus, property acquired one way is taxed and that acquired another way is not.

"The discount of five per centum allowed by the second section for the payment of the tax within three months after death, presents another instance of want of uniformity, as the estates of persons dying since the passage of the act can avail themselves of this privilege, while those who died before the act can by no possibility do so."

Other circumstances are pointed out to show that the tax is not uniform, and then, in conclusion, it is stated that "it may be observed that while the enacting clause limits the subject of taxation to personal property, the last section of the act declares it is the 'intention of this act to impose a direct inheritance tax on all estates or parts not subject to the act or acts providing for the collection of collateral inheritance taxes,' so that by this sweeping provision all estates, whether real or personal, not reached by the collateral inheritance tax are intended to be covered.

"This section illustrates another of the inconsistencies of this act, and this last section is in direct conflict with the first one.

"We are, therefore, of the opinion that the second proviso to the enacting clause is null and void, because it does not answer the office of a proviso, and that the whole act is unconstitutional, because of want of uniformity in the imposition of this tax. The exceptions of the Commonwealth are dismissed."

Judge Penrose, in his concurring opinion, dwells on the points on which the court holds the act to be invalid, and concludes by saying: "Taxes on collateral successions had been known for more than fifty years when the Constitution of 1874 was adopted. They are spoken of as taxes in innumerable acts of Assembly and decisions of the courts, and by the people of the State, who during all this time had been accustomed to paying them; and the very act now under consideration, not only in its title (which would otherwise be defective), but in every section speaks of the 'tax' which it seeks to impose. And yet we are solemnly asked to say that this is not a tax, but an excise or duty. What is an excise or duty but one species of tax? The Constitution is explicit: 'All taxes shall be uniform,' etc."

Judge Ashman, in his dissenting opinion, expressed the view that the taxation proposed by the act does not violate the provisions of the Constitution, which declares that all taxes shall be uniform upon the same class of subjects. The judge had considered the other points in his adjudication of the Lacey estate.

The matter will now go to the Supreme Court of the State for final determination. What renders the question of very great importance is the fact, heretofore referred to, that if the direct inheritance tax is declared unconstitutional, upon the ground that the exemption from liability to the tax of five thousand dollars' worth of personal property in every estate constitutes such a lack of uniformity as to invalidate the tax, under the provisions of the Constitution, no good reason appears why the tax on collateral inheritances, which is not imposed on estates of a less clear value than two hundred and fifty dollars, must not be declared unconstitutional also. The tax on collateral inheritances, although the oldest we have, is now collected under the Act of 1887, which act must be construed, of course, according to the provisions of the present Constitution. It is true, that if the Act of 1887 were declared unconstitutional the earlier acts would revive, so that the large and easily collected revenue from this source would not be wholly lost, but such a recurrence to old acts would be attended with numberless inconveniences. It would seem as though the provision as to estates of persons deceased before the passage of the act, and undistributed, might be declared invalid, without vitiating the entire act, and that so much of the act as appears to provide for the imposition of the tax upon other subjects than personalty should be construed in the light of the avowed purpose of the act, as stated in the first section, which is to tax personal property only. The main objection to the tax, that it is not uniform in its application, is, in the

writer's opinion, fairly met by Judge Ashman, in his opinion above quoted, and it is not improbable that the Supreme Court will take a similar view.

The Attorney-General has advised registers of wills to proceed with the collection of this tax until the court of last resort shall decide adversely to its validity. Under these circumstances it would be well for persons of whom the tax is demanded, to impound the same, since there is no provision in the Act of 1897 for a refund of direct inheritance or succession taxes paid in error, and the getting back of any tax paid, after it has once gone into the State Treasury, might prove very difficult should the Supreme Court decide adversely to the constitutionality of the Act of 1897.

CHAPTER XVI.

LICENSES.

LICENSES are among the oldest sources of State revenue. Tavern licenses existed from the earliest Colonial times. The history of legislation upon the subject of licenses will be found under the heads of Mercantile Licenses, Liquor Licenses, etc., further on in this chapter.

Mercantile Licenses.

History. The Act of April 2, 1821 (P. L., p. 244), provides:

"That every person who shall deal in the selling of any goods, wares or merchandise, wines, or distilled liquors, except such as are the growth, produce, or manufacture of the United States, and except such as are sold by the importer thereof in the original cask, case, box, or package wherein the same shall have been imported, excepting also sales made by auctioneers, appointed by law, and tavern-keepers, shall . . . take out from the treasurer of the proper city or county a license for vending such foreign merchandise or liquors. . . ."

The constables of each township or ward are to make, under oath, a list of all retail dealers, within their respective districts, and deliver the same to the clerk of the court of quarter sessions, or to the clerk of the mayor's court of the proper city and county, to be filed of record, and the proper city or county treasurer is required to furnish the attorney for the Commonwealth with a correct list of those who have paid license, and said attorney is required to prosecute all dealers who have not obtained licenses.

The Act of March 4, 1824 (P. L., p. 32), provides:

"That if any person or persons shall have more than one store in which foreign merchandise is vended, such person or persons shall be required to take out a license for each and every store, and it shall be the duty of the constables to make return of every such store."

This act also requires the publication, by the treasurers of the several cities and counties, of lists of all persons returned to them as retailers of foreign merchandise, designating those who have, and those who have not, taken out a license, a copy of one of the newspapers containing such list to be sent to the Auditor-General. This act also provides:

"That so much of the first section of the act to which this is a supplement [Act of 1821, *supra*] as excepts from taxation every

person who shall deal in the selling of any goods, wares or merchandise, wines, or distilled liquors, where the same is sold in the original cask, case, box, or package, is hereby repealed, and every such person or persons shall be liable to the same amount of tax as retail merchants now are, and as fully as if they had not been excepted by the act to which this is a supplement."

The Act of April 7, 1830 (P. L., p. 387), re-enacts the first section of the Act of 1821, as amended by the Act of 1824, but adds:

"Provided, that nothing in this act shall be taken or construed so as to require the importer of foreign goods disposing of the same in the form in which said goods are imported, to take out a license for vending the same."

This act divides the dealers, enumerated in its first section, into eight classes, according to their annual sales, from fifty thousand dollars per annum, in the case of the first class, to two thousand five hundred dollars, or less, in the case of the eighth class.

"Provided, that any *femme sole* trader, or single woman, in this Commonwealth, who shall vend foreign merchandise, and whose annual sales shall not exceed those of the eighth class, shall not be required to take out a license."

The act provides for lists of dealers to be furnished by constables, under oath, to clerks of courts of quarter sessions, or clerks of mayors' courts; that the associate judges and county commissioners of each county make up, from the said constables' returns, and from their own knowledge, accurate lists of all merchants doing business within their respective counties, classify them by amount of sales, and deliver such lists to the county treasurers; that the said judges and commissioners shall fix an appeal day, when merchants dissatisfied with their ratings may appear and be heard; that the clerks of courts, after receiving such lists, shall transmit copies thereof to the Auditor-General, who shall charge the treasurers of the several cities and counties with the amounts payable by the several persons mentioned in the lists; and that city or county treasurers shall make out lists of dealers who have not paid the license fee, and institute suits against the same, etc.

The Act of May 4, 1841 (P. L., p. 307), Section 10, provides:

"That from and after the passage of this act the several provisions now in force of the act of March 4, 1824, . . . and the several provisions of the Act of April 7, 1830, . . . except so much thereof as may be altered or supplied, shall be and the same are hereby extended and applied to *all persons engaged in the selling or vending of goods*, wares, merchandise, commodities, or effects *of whatsoever kind or nature*, and all such sellers or vendors shall be classed and required to pay annually for the use of the Commonwealth, for their respective licenses, as follows," etc.

This act creates the existing classes from 1 to 14, which appear hereafter. It also provides:

"Provided, that no person whose annual sales do not exceed

one thousand dollars, and no *femme sole* trader, or single woman, whose annual sales do not exceed two thousand five hundred dollars, . . . nor any importer of foreign goods, wares, or merchandise, who may vend or dispose of the same in the original package as imported, nor any person who may vend or dispose of articles of his own growth, produce, or manufacture, shall be required to take out a license under this act."

The Act of April 16, 1845 (P. L., p. 533), provides:

"Section 5. That for the purpose of securing the tax now authorized by law to be assessed on wholesale dealers and retailers of merchandise, the Courts of Common Pleas of the counties of Allegheny and Philadelphia, respectively, are hereby authorized and empowered to appoint . . . a person of suitable qualifications in each of said counties, who shall be styled the 'appraiser of mercantile taxes,' whose duty it shall be to ascertain and assess all the dealers as aforesaid."

The act requires the appraiser to prepare a list of all the dealers, classify them, and furnish all dealers so assessed with a written notice of their classification, and the time and place when and where appeals may be made; also to furnish the county treasurer with a certified list of said dealers and their classification.

The Act of April 22, 1846 (P. L., p. 489), provides that the requirements of the Act of 1845, relative to the appointment of mercantile appraisers in Philadelphia and Allegheny Counties, shall extend to *all* counties; but that the written or printed notices required by the Act of 1845 shall only be given in the City and County of Philadelphia and the cities of Allegheny and Pittsburg, notices of assessment in all other counties and in the remainder of Allegheny County to be given by at least four advertisements in at least two newspapers. The appointment of two additional appraisers of mercantile taxes in Philadelphia County, by the court of common pleas, is provided for by Section 13. The act further provides for the payment of fees and mileage to the appraisers.

Section 11 substitutes for the enumerations of the classes of dealers subject to license, in previous acts, the following:

"Section 11. That hereafter all dealers in goods, wares, and merchandise, the growth, product, and manufacture of the United States, and any person who shall keep a store or warehouse, for the purpose of vending and disposing of goods, wares, and merchandise, where such person is concerned or interested in the manufacture of such goods, wares, and merchandise, shall be classified in the same manner, and required to pay the same annual tax and license fee as is now provided in relation to dealers in foreign merchandise; Provided, that mechanics, who keep a store or warehouse at their own shop or manufactory, for the purpose of vending their own manufactures exclusively, shall not be required to take out any license."

It is said that under the Act of 1841, many dealers evaded the tax by taking a small interest in some manufacturing enterprise, and then buying and selling a portion of its product, when their principal business was, really, the keeping of a store for the sale of general merchandise; and that the above provision of the Act of 1846 was intended to prevent such evasions.

The Act of February 27, 1868 (P. L., p. 43), provides:

"That the true intent and meaning of the eleventh section of the act . . . approved April 22, 1846, is hereby declared to be, that a manufacturer or mechanic, not having a store or warehouse apart from his manufactory or work-shop, for the purpose of vending goods, such manufacturer or mechanic shall not be classified or required to pay the annual tax and license as is now required in relation to foreign dealers. . . ."

The Act of 1868, just quoted, appears to have been passed on account of the construction put upon the Act of April 22, 1846, *supra*, by the courts in Berks County *v.* Bertolet, 13 Pa., 521, and other similar cases.

The eighth section of the Act of April 15, 1850 (P. L., p. 472), is as follows:

"That hereafter the mileage of the appraisers of mercantile taxes shall be paid by the State Treasurer, on the warrant of the Auditor-General, the accounts therefor being first settled by the Auditor-General and State Treasurer, and so much of the twelfth section of the Act of April 22, 1846, . . . as authorizes county treasurers to approve of and pay the mileage of appraisers of mercantile taxes is hereby repealed."

The Act of April 11, 1862 (P. L., p. 492), provides:

"Section 1. That it shall be the duty of the mercantile appraisers in the several cities and counties of this State, personally to visit the store . . . or other place of business of every person whom they are required by law to ascertain and assess, and, at the time of such visit, to give, to each such person living on the premises, a written or printed notice, specifying the classification and amount of license money to be paid by such person to the State, and also the time and place when and where he, the said appraiser, will hold an appeal, as required by law. Any person so ascertained and assessed who shall fail to attend such appeal, or to appeal from the decision of the appraiser to the proper court of common pleas, within ten days thereafter (which appeal the said court is required to hear and determine within twenty days after such appeal shall be taken, or at the next succeeding sitting of said court), or having so appealed and the court having determined the same, shall not be permitted to set up as a defence, . . . when suit shall be brought for recovery of the same, either that he is not a dealer in or retailer of merchandise . . . or other party required to be ascertained and assessed for license by the mercantile appraiser, or any other ground of defence which might have been heard and

determined, either by said mercantile appraiser, or the court of common pleas on appeal, as aforesaid."

. . . . . .

"Section 3. That no mercantile appraiser shall be allowed any pay for mileage by the Auditor-General, unless he shall first make oath or affirmation that he has actually travelled, in the performance of his duty as mercantile appraiser, the number of miles charged by him, and personally visited the place of business of every person ascertained and assessed by him.

"Section 4. That all licenses returned by the mercantile appraiser to the city or county treasurer shall be sued for and recovered by action of debt, before a justice of the peace, with right of appeal, as provided in the first section of this act; Provided, that a civil suit for the recovery of the amount of the license shall not be a bar to or interfere with any proceeding by indictment, where such proceeding is now authorized by law, but the remedies by civil action and indictment shall be cumulative.

"Section 5. That it shall be the duty of every city and county treasurer to sue for the recovery of all licenses duly returned to him by the mercantile appraisers, if not paid on or before the first day of July in each and every year, within ten days after that date; and said treasurer shall not be discharged from any such license, unless he brings suit to recover the same within said date, and presses the same to judgment and execution as soon thereafter as practicable, and pays the amount of all such licenses received by him into the State Treasury, on or before the first day of October ensuing; nor shall he receive any commissions on such licenses, unless he makes payment as aforesaid.

"Section 6. That any mercantile appraiser who shall neglect or refuse to visit the store, or other place of business, of any person ascertained and assessed by him for license, and to furnish such person with a written or printed notice of his classification, amount of license, and place and time of holding appeal, as required by the first section of this act, shall pay a penalty of five dollars, to be recovered as debts of a like amount are recoverable, at the suit of the person aggrieved, for the use of such person, on due proof of such neglect or refusal being made according to law.

"Section 7. That all the penalties of the existing laws and the provisions thereof, in regard to licenses to wholesale dealers and retailers of merchandise, be and the same are declared to be applicable to each of the said fourteen classes."

The Act of April 13, 1866 (P. L., p. 104), created additional classes of vendors, classes A to F, inclusive, which appear, *infra*.

The Act of April 9, 1870 (P. L., p. 59), provides that:

"Manufacturers and mechanics who shall sell goods, wares, or merchandise, other than their own manufacture, not exceeding the sum or value of five hundred dollars per annum, shall not be classified or required to pay any annual tax or license fee; but if

such sales shall exceed the sum or value of five hundred dollars per annum, as aforesaid, they shall be classified in the same manner, and required to pay the same annual tax, as is now required to be paid by dealers in foreign merchandise."

The Act of April 18, 1878 (P. L., p. 26), Section 5, exempts farmers, selling their own produce, or occupying a stall or stalls, or sidewalk, in any markets of a city of the first class, from liability to classification for mercantile license.

The Act of April 20, 1887 (P. L., p. 60), provides:

"Section 1. That the county commissioners of the respective counties are hereby authorized and required to publish the mercantile appraisers' list of names and classification of each person subject to license, in three papers of general circulation, in each county of the Commonwealth, one of which shall represent the minority party of the two principal parties of the county, and one of which may be a German or Welsh paper; Provided, however, that such list shall not be published in more than two papers in any county should the county commissioners desire to limit such publication to that number; And provided further, that the Auditor-General and City Treasurer shall direct that said list and classification shall be published in four newspapers, in cities of the first class.

"Section 2. The Auditor-General is hereby authorized and empowered to pay the respective newspapers for the publication of said mercantile appraisers' list the usual rates of advertising charged by the same to private customers, and not exceeding thirty cents per line for four insertions; Provided, that in no case shall the amount paid for advertising in any city or county exceed ten per centum of the amount received by the Treasury of the State from said city or county, during the preceding year, from the class of taxes so advertised; and all bills shall be certified to the county treasurers of the respective counties by the appraiser; and the county treasurers are hereby authorized to pay the same, upon said bills being receipted by the respective publishers in proper form, and upon approval by the Auditor-General they shall be entitled to receive credit for the amount so paid, in the settlement of their accounts for licenses with the Commonwealth.

"Section 3. The appointment of mercantile appraisers shall be made annually by the county commissioners, except in cities of the first class, where the Auditor-General and the treasurer of the city are authorized and required to appoint five suitably qualified citizens, all of whom shall not be of the same political party, and the term of office of said appraisers shall be for three years. The accounts for advertising mercantile lists, and all other State accounts, shall be audited by the Auditor-General.

"Section 4. There shall be no pay for advertising, nor fee to any appraiser, for fictitious names, nor the names of persons not residing at the place designated."

Acts Now in Force. From the foregoing it will be seen that the different classes of mercantile licenses now existing, and the rates to be paid by each class, are established by the Act of May 4, 1841 (P. L., p. 307), and the Act of April 13, 1866 (P. L., p. 104), and that the Acts of 1846, 1850, and 1862, above referred to, as well as the later acts quoted, are all in force, in whole or in part. It is thought that the acts and portions of acts now in force can readily be seen from the foregoing. That portion of the Act of 1824 which is quoted is probably still in force.

Assessment of Tax; Mercantile Appraisers. The mercantile license tax is assessed by the mercantile appraisers, and collected by the treasurers of the respective counties. The laws relative to the appointment of mercantile appraisers, their duties and compensation, and the duties of the county treasurers in connection with mercantile licenses, are as follows:

The appointment of mercantile appraisers shall be made annually, by the county commissioners, except in cities of the first class, where the Auditor-General and treasurer of the city are authorized and required to appoint five suitably qualified citizens, all of whom shall not be of the same political party, and the term of office for said appraisers shall be three years. Section 3, Act April 20, 1887 (P. L., p. 60).

"It shall be the duty of the mercantile appraisers in the several cities and counties of this Commonwealth personally to visit the store, distillery, brewery, or other place of business of every person whom they are required by law to ascertain and assess, and at the time of such visit to give to each such person living on the premises a written or printed notice, specifying the classification and amount of license money to be paid by such person to the State, and also the time and place when and where he, the said appraiser, will hold an appeal, as required by law. Any person so ascertained and assessed who shall fail to attend such appeal, or to appeal from the decision of the appraiser to the proper court of common pleas, within ten days thereafter, which appeal the said court is required to hear and determine within twenty days after such appeal shall be taken, or at the next succeeding sitting of said court, or having so appealed, and the court having determined the same, shall not be permitted to set up as a defence to the recovery of the amount of the license, which he is required to pay, when suit shall be brought for the recovery of the same, either that he is not a dealer in or retailer of merchandise, or a distiller, brewer, or other party required to be ascertained and assessed for license by the mercantile appraiser, or any other ground of defence which might have been heard and determined, either by the said mercantile appraiser, or the court of common pleas, on appeal, as aforesaid." Act April 11, 1862 (P. L., p. 492).

The commissioners of the several counties are required to publish the mercantile appraisers' lists of names and classification of

each person subject to license, in three papers of general circulation in each county, one of which shall represent the minority party of the two principal political parties of the county, and one of which may be a German or a Welsh paper. They are not, however, required to publish the list in more than two papers, if they wish to limit the publication to that number. In Philadelphia the lists are published in four newspapers designated by the Auditor-General and City Treasurer. Act April 20, 1887 (P. L., p. 60).

Where there has been an unavoidable delay in making up the list, and personal notice has been given in each case, and no public good would be accomplished by advertisement, the city treasurer may waive advertisement, especially where the tax has been paid. *In re* Mercantile Appraisers' Lists, 1 D. R., 439.

The fees of mercantile appraisers are fifty cents for each certificate of license issued, and six cents per mile, circular, for all necessary travelling, except in Philadelphia County, where no mileage is paid. Section 1, Act February 27, 1865 (P. L., p. 4); Act April 22, 1846 (P. L., p. 486).

The mileage of mercantile appraisers is paid by the State Treasurer on the warrant of the Auditor-General. Only the miles actually travelled are paid for, as shown by a sworn statement made to the Auditor-General, setting forth the miles travelled, and that the appraiser has personally visited the place of business of every person assessed by him. Section 8, Act April 15, 1850 (P. L., p. 472); Section 3, Act April 11, 1862 (P. L., 492).

"The appraisers so appointed shall furnish to the treasurer of the proper city or county a certified list of the dealers aforesaid, with the classification as made out by them, or determined by the judges of the court on appeal, as aforesaid, and the said treasurer shall within twenty days thereafter transmit to the Auditor-General a copy of such list, and shall receive and collect, together with the fees of the appraiser and his own fee, the sums to be paid by such dealers for their licenses, in the manner directed by law." Section 8, Act April 16, 1845 (P. L., p. 532).

"All licenses returned by the mercantile appraisers to the city or county treasurer shall be sued for and recovered by action of debt before a justice of the peace, with right of appeal . . . Provided that a civil suit for the recovery of the amount of license shall not be a bar to interfere with any proceeding by indictment, where such proceeding is now authorized by law." Section 4, Act April 11, 1862 (P. L., p. 492).

"It shall be the duty of every city and county treasurer to sue for the recovery of licenses duly returned to him by the mercantile appraisers, if not paid on or before the first day of July in each and every year, within ten days after that date; . . . and said treasurer shall not be discharged from any such license unless he bring suit to recover the same within said date, and press the

same to judgment and execution as soon thereafter as practicable, and pay the amouut of such licenses received by him into the State Treasury, on or before the first day of October ensuing, nor shall he receive any commissions on such licenses unless he makes payment as aforesaid." Section 5, Act April 11, 1862 (P. L., p. 492).

Mercantile Licenses Issued for a Portion of a Year. "Any person commencing retailing after the time at which licenses are issuable under this act shall take out a license from that time until the next yearly issuing thereof (May 31st), for which period he shall pay at the rate of twenty dollars for the whole year." Section 6, Act April 7, 1830 (P. L., p. 387).

CIRCULAR OF INSTRUCTIONS TO MERCANTILE APPRAISERS ISSUED BY AUDITOR-GENERAL'S DEPARTMENT.

AUDITOR-GENERAL'S OFFICE,
HARRISBURG, December 24, 1897.

GENTLEMEN: By the twelfth section of the Act of 1846, and third section of Act of April 20, 1887, it is made the duty of the commissioners of each county [except those of Philadelphia County] to appoint the appraiser of mercantile licenses annually. The date of such appointment, outside of Philadelphia, should be in the month of December preceding the year for which the appraisement is to be made.

Before entering upon the discharge of his duties, the attention of the mercatile appraiser should be called to the following instructions, viz.:

I. The appraiser shall personally visit the stores, or other places of business, of all persons engaged in the selling or vending of goods, wares, merchandise, commodities, or other effects of whatsoever kind or nature; also all stock brokers, bill brokers, exchange brokers, merchandise brokers, real estate brokers, and auctioneers. In case of mercantile licenses (retailers'), no license is to be assessed where the annual amount of sales is less than $1000.

II. In an opinion of the Supreme Court, delivered at Pittsburg, in re Einstein, Pollard and Lanahan (29th Weekly Notes of Cases, page 214), it was held that dealers in liquors should not be returned by the mercantile appraiser. If, however, such dealers sell other goods than liquors to the amount of $1000.00 a year, it is the duty of the mercantile appraiser to rate them for a mercantile license for the sale of such other goods.

III. The appraiser shall then rate and assess all dealers and vendors as above enumerated, in accordance with existing laws, and shall give to each person whom he shall assess, or to some person living on the premises where the business rated is carried on, a written or printed notice, specifying the classification and the amount of license to be paid by the person assessed, and also the time and place when and where the appraiser will hold an appeal.

IV. The appraiser shall furnish to the county treasurer a certified list of the dealers aforesaid, with the classification, as made out by him.

V. No bills for mileage of appraisers will be paid unless this Department is satisfied that the appraiser has in person visited, in one continuous trip, every place of business assessed; nor will any bill for mileage be settled before the month of October, and until the county treasurer has filed in his office a certified copy of the appraiser's list and the required statement of licenses which have proved uncollectible.

VI. In accordance with recent decisions of the Supreme Court, dealers in live stock are exempt from payment of mercantile license, and they must not be assessed. It has been held also that butchers who sell the meat of animals which they have themselves slaughtered are not liable to the pay-

ment of a mercantile license. But those butchers who purchase cattle already killed and dressed by some one else, and sell the meat thereof, are liable to the payment of a mercantile license, and must be assessed. Care should he taken by the appraisers to draw the proper distinction. A butcher who sells meat at a place other than the place of slaughter is liable to the payment of a mercantile license.* All foreign or resident dealers or firms who have a meat shop or place for selling meats, etc., separate or apart from the slaughter-house must be rated for a mercantile license.

VII. Information has been filed in this Department that in some of the counties of the Commonwealth the Act of June 24, 1895 (P. L., page 249), is not being enforced. The act provides for the licensing of buildings and other places in which theatrical, operatic, or circus performances are held and menageries or museums are exhibited, by the owner or owners, lessee or lessees of said building, or by the proprietor of a circus, menagerie, or museum. County treasurers are instructed to give this matter personal attention and see that the law is strictly enforced.

VIII. There must be no fictitious names on the appraiser's list, nor names of persons not residing at the places designated by him.

IX. Under an opinion of the Attorney-General, mercantile appraisers are instructed, hereafter, to ascertain and assess all owners of eating-houses, restaurants, oyster saloons, etc., not selling spirituous, vinous, malt, or brewed liquors, under the heading "Eating-house, etc., Licenses," according to the requirements of sections 20, 21, 22, and 23, Act of April 10, 1849 (P. L., page 571). Provision has been made by this Department for returning the above class of licenses.

X. The Act of April 20, 1887 (P. L., page 60), provides for the publication of the appraiser's list in not less than two nor more than three newspapers, of general circulation in each county, one of which must represent the minority party of the two leading political parties of the county, and one of which may, in the option of the county commissioners, be a German or Welsh newspaper. Since the Supreme Court has held (29th Weekly Notes of Cases, page 214) that the mercantile appraisers should not return liquor dealers of any kind, you will see that the list, as given to your newspapers for publication, does not contain the names of dealers in liquors of any kind, unless such dealers are rated and liable for a mercantile license for the sale of other merchandise in addition to the license they pay for the sale of liquors.

The mercantile appraiser has no control over the publication of said list. Such publication must be made on the order of the county commissioners, and under the provisions of Act of May 6, 1874 (P. L., page 309), the advertisement must be published only in the regular advertising columns of a newspaper, without being leaded or displayed. The publication must be made once a week for four successive weeks immediately preceding the time fixed by the appraiser for holding his appeal. Under an opinion of the Attorney-General and decision of the Supreme Court, in the case of Joos *v.* McCandless, the publication must not be made in a Sunday newspaper, or in one dated and purporting to be issued on Sunday. The county commissioners should call the special attention of newspapers publishing the appraiser's list to the provisions of the Acts of May 6, 1874, and April 20, 1887, relating to the publication of said list, and the limitation of charges therefor as specified in these instructions.

The advertisement must be charged for at the rate charged to private customers who advertise in the ordinary advertising columns of the newspapers, not exceeding thirty cents per line for four insertions. Section 2, Act of April 20, 1887 (P. L., 60) provides "that in no case shall the amount paid for advertising in any city or county exceed ten per centum of the amount received by the treasury of the State from said city or county during the preceding year from the class of taxes so advertised."

* This does not apply to sales made from wagons or from stalls in public markets.

Therefore, in approving said publishers' bills, hereafter, and in determining the ten per centum limit, as fixed by the Act of 1887, all liquor licenses will be excluded.

The second section of the Act of April 20, 1887, as aforesaid, provides among other things as follows: "And all bills shall be certified to the county treasurers of the respective counties by the appraiser, and the county treasurers are hereby authorized to pay the same, upon said bills being receipted by the respective publishers in proper form, and, upon approval by the Auditor-General, they shall be entitled to receive credit for the amount so paid in the settlement of their accounts for licenses with the Commonwealth.

To avoid complications in the settlement of the accounts of a county treasurer with the Commonwealth, I request that no bills for publishing said list be paid until presented to and approved by the Auditor-General, and under no circumstances will credit be allowed for a bill paid without a previous approval of the same by the Auditor-General.

XI. Bills for the mileage of mercantile appraisers and for costs due justices of the peace, aldermen, and constables on uncollectible licenses are paid by warrants of the Auditor-General on the State Treasurer, the former in the month of October and the latter in the month of December. The county treasurer is prohibited by law from making these payments. The exemption laws cannot be pleaded against the Commonwealth in suits for the collection of licenses or any other form of State taxes. The attention of county treasurers is directed to the practice in vogue in many of the counties of the Commonwealth by justices of the peace or aldermen in issuing summons and executions in suits for uncollected licenses to constables other than those residing in the district where the defendant lives, or nearest thereto. Now, this is in direct violation of Sections 2 and 12 of the Act of March 20, 1810 (P. L., pages 162 and 167), the language of which, so far as summons is concerned, is as follows: "To be directed to the constable of the township, ward, or district where the defendant usually resides, or can be found, or to the next constable most convenient to the defendant." With reference to executions, the language is as follows: "Which execution shall be directed to the constable of the ward, district, or township, where the defendant resides, or to the next constable most convenient to the defendant." The treasurers of the several counties shall notify the justice of the peace or alderman in whose hand the above-named claims are placed for collection, that no costs charged in violation of the foregoing extracts of the law will be paid by this Department.

XII. The Act of June 27, 1895 (P. L., page 396), being "An act to amend the 1st, 2d, and 3d sections of an act entitled 'An Act relating to Brokers and Private Bankers,' approved the 16th day of May, A. D. 1861, relieving real estate agents from the provisions of the act, does not relieve said real estate agents or brokers from the payment of a brokers' license for the use of the Commonwealth, as provided in Section 7, Act of May 15, 1850 (P. L., page 773). Mercantile appraisers are instructed to return "all stock brokers, bill brokers, exchange brokers, merchandise brokers, and real estate brokers at the rate of three per cent. upon their annual receipts from commissions, discounts, abatements, allowances, or other similar means in the transaction of their business," as provided in the Act of May 15, 1850.

XIII. Attention is also called to the Act of April 11, 1862, as printed on this circular. County treasurers are requested to read the Act of July 30, 1897 (P. L., page 464), "to provide revenue and regulate the sale of malt, brewed, vinous, and spirituous liquors, or any admixture thereof," etc., and make return of the same as provided on the new monthly return blank for 1898, "B, Form 5."

AMOS H. MYLIN,
Auditor-General.

For further information in regard to duties of mercantile appraisers, see pages 207 to 209.

Dealers in Merchandise. P. L., 1840, p. 310; May 4, 1841, P. L., p. 307; Section 10 P. L., 1866, p. 110.

RATES OF MERCANTILE LICENSES.

Class.	Amount of sales.	Tax.
14	below $ 5,000	$ 7 00
13	5,000	10 00
12	10,000	12 50
11	15,000	15 00
10	20,000	20 00
9	30,000	25 00
8	40,000	30 00
7	50,000	40 00
6	60,000	50 00
5	75,000	60 00
4	85,000	80 00
3	100,000	100 00
2	200,000	150 00
1	300,000	200 00
A	500,000	350 00
B	1,000,000	450 00
C	2,000,000	600 00
D	3,000,000	800 00
E	4,000,000	900 00
F	4,000,000	1000 00

(*No male whose annual sales do not exceed* $1000 *and no femme sole trader or single woman whose annual sales do not exceed* $2500 *shall be required to be licensed.*)

Decisions. Dealers in leaf tobacco, assessed by the mercantile appraiser in one county, where they have their warehouse from which all their sales are made, are not liable to be assessed also in another county where they purchase tobacco and have a warehouse to store but not to vend the same. Com. *v.* Teller, 144 Pa., 545.

A manufacturing company may sell its products at its own factory, or send them to a commission merchant to sell, without liability for mercantile license, but, if the company keep a store or warehouse where it sells goods manufactured by others, as well as those made by itself, it is liable to assessment as a dealer. The laws exemptiug manufacturing companies from taxation do not relieve a company thus selling goods from the mercantile license tax. Com. *v.* Thomas Potter, Sons & Co., 159 Pa., 583.

A mining company selling powder to its employés, usually at a profit, is subject to the tax. Canal Company's Case, 8 Pa. C. C., 496.

A miller who purchases grain, grinds it into flour, and sells it as a dealer, is held to be liable to mercantile license in the case of Com. *v.* McCullock, 1 Pears., especially if he retails the flour at other places than his mill. Berks Co. *v.* Bertelett, 13 Pa., 522. But these cases appear to be overruled by the cases of Com. *v.*

Campbell, 33 Pa., 380, and Norris *v.* Com., 3 Casey, 522. Lamon *v.* Paxton, 2 Luz. L. Reg., 307.

A plumber who buys valves, radiators, boilers, etc., and cuts and fits them together in the shape of steam- and water-heating apparatus, which he puts in buildings, and has no store or other place of business at which he buys and sells, and has no other place of business than his workshop, and is paid by charging for his labor and the cost of materials which he buys, with a commission on the cost, is not a "dealer in goods, wares, and merchandise" within the meaning of the laws which impose a mercantile license tax. Com. *v.* Gormley, 173 Pa., 586.

A foreign corporation having no factory, store, office, or other place of business in the State of Pennsylvania, and whose sales are made through agents or travelling salesmen soliciting orders and transmitting them to the office of the company, is not liable to be assessed with the mercantile tax as a dealer doing business in this State, and it may treat the assessment as a nullity, and defend a suit brought for such tax, notwithstanding it has taken no appeal from the assessment. Com. *v.* American Tobacco Company, 173 Pa., 531.

A person selling goods of his own manufacture, also selling articles of domestic manufacture made by others, to the amount of less than one thousand dollars per annum, is taxable. Osborn *v.* Holmes, 9 Pa., 333.

But, as a manufacturer or mechanic only, a person is not required to take out a license unless he keep a store or warehouse away from his factory for the sale of his product. Com. *v.* Campbell, 33 Pa., 380; Com. *v.* Potter, Sons & Co., 159 Pa., 583.

Dealers in live-stock are not subject to tax. Com. *v.* Evans, 32 Pitts. L. J., 307; nor is one who ships cattle and poultry from his farm. Com. *v.* Brinton, 14 Pa. C. C., 460.

Butchers having meat stores apart from their slaughter-house premises are liable to assessment and payment of mercantile tax. Com. *v.* Beener, 3 Kulp, 351; Van Storch's Appeal, 1 Lack. Legal Rec., 442. But a butcher having a slaughter house and selling meat of his own killing in the public markets, or upon his own wagon, is not liable to assessment for license. Com. *v.* Finnell, 3 Kulp, 340; Com. *v.* Dinkelberg, 2 Chester, 384; Givler *v.* Com., 12 W. N. C., 237.

Although dealers in dressed meats who retail meat not slaughtered by themselves, from the stalls of a public market, are subject to the tax. Com. *v.* Bickings, 3 Chester, 386; Com. *v.* Bickings, 3 Kulp, 346.

One who is engaged in the business of butchering at his own slaughter-house on a farm, having no store or warehouse and not selling at retail, but selling and shipping his meat to commission

men and retailers, is not subject to payment of mercantile license tax. Com. *v.* Brenton, 14 C. C., 460.

Paper-hangers are taxable. Com. *v.* Frank, 2 C. P. Rep., 27.

Farmers selling produce in market are not taxable, even though a portion of such produce may have been raised, and be sold for, another. Barton *v.* Morris, 1 W. N. C., 543.

Liquor Licenses.

History. The limits of this work do not permit of going into the history of legislation upon the subject of licenses of liquor dealers at length. Reference is made to the following acts:

Acts of March 11, 1834 (P. L., p. 120); May 8, 1854 (P. L., p. 663); March 31, 1856 (P. L., p. 200); March 20, 1858 (P. L., 365); April 14, 1859 (P. L., p. 653); May 7, 1864 (P. L., p. 898); March 22, 1867 (P. L., p. 40); April 17, 1867 (P. L., p. 88), and April 12, 1875 (P. L., p. 40).

The existing system of licensing liquor dealers was created by the Act of May 13, 1887 (P. L., p. 108), which provides for the licensing of retail dealers, and the Act of May 24, 1887 (P. L., p. 194), which relates to the licensing of wholesale dealers, brewers, bottlers, distillers, etc. These acts and their supplements are voluminous, and are not inserted here for lack of space. The following is a brief summary of their provisions. It is followed by statements of the rates of license to which the different classes of dealers, brewers, etc., are subject, under said acts or their supplements.

Under the system created by the Acts of 1887, liquors may be sold only by persons to whom licenses have been issued by the court of quarter sessions of the proper county. Such licenses are issued for one year. Every applicant for a license shall file a petition with the proper court of quarter sessions, at least three weeks before the first day of the sessions of the court at which the same is to be heard, and pay said clerk a fee of five dollars. The clerk publishes a list of all applicants. The petition shall contain: 1. The name and present residence of the applicant, and how long he has resided there. 2. The particular place for which a license is desired. 3. The place of birth of said applicant, and, if a naturalized citizen, where and when naturalized. 4. The name of owner of premises. 5. That the place to be licensed is necessary for the accommodation of the public. 6. That none of the applicants are in any manner pecuniarily interested in the profits of the business conducted at any other place in said county, where any of said liquors are sold or kept for sale. 7. That the applicant is the only person in any manner pecuniarily interested in the business, etc. 8. Whether applicant has had a liquor license revoked during previous year. 9. The names of

not less than two reputable freeholders of the ward or township where the liquor is to be sold, who will be his sureties on the bond which is required, with a statement that each of said sureties owns real estate in the county to a certain amount. The petition must be verified by affidavit.

There must be annexed to such petition a certificate signed by at least twelve reputable, qualified electors of the ward, borough, etc., where the liquor is to be sold, stating that they know the petitioner, believe his statements to be true, and request the granting of the prayer of his petition.

The court of quarter sessions shall hear all petitions of residents of the ward, borough, etc., in favor of or against the granting of license, and shall not grant such license if persuaded that public accommodation does not require it or that applicant is not a fit person to be granted a license. The said court may also revoke licenses.

License shall not issue until a bond shall have been executed to the Commonwealth, with two sureties, in the penal sum of two thousand dollars, conditioned for the faithful observance of all laws of the State.

Constables are to make return of all places where liquors are sold, stating which are licensed, and which not, and shall make monthly visitations to places where liquors are sold to ascertain whether any act of Assembly has been or is being violated. The license shall be framed, under glass, and kept in a conspicuous place, in the chief place of making sale. Retailers may not sell on credit. Persons selling without license are subject to a fine of not less than five hundred nor more than five thousand dollars, and to an imprisonment of not less than three nor more than twelve months. Licensed persons violating the laws are subject to various fines for the first, second, and third offences, respectively. Liquors may not be sold on Sunday or on election days, etc.

The rates payable for said licenses are as follows:

Retail Liquor Licenses. Acts of April 30, 1841, Secs. 9 and 10 (P. L., p. 311); March 31, 1856, Sec. 12 (P. L., p. 202); April 20, 1858, Sec. 2 (P. L., p. 365); May 13, 1887, Sec. 2 (P. L., p. 108).

Licenses for the sale of vinous, spirituous, malt, or brewed liquors at retail in quantities not exceeding one quart, are rated as follows:

In cities of the first and second classes, $1000.

In cities of the third class, $500.

In all other cities, $300.

In boroughs, $150.

In townships, $75.

Act of June 9, 1891 (P. L., p. 248).

The second section of the Act of July 30, 1897 (P. L., p. 464), provides for the payment of an *additional* license fee as follows:

In townships, $25.
In boroughs, $50.
In cities of the first and second classes, $100.
In all other cities, $50.

This makes the total license fees payable by retail liquor dealers as follows:

In cities of the first and second classes, $1100.
In cities of the third class, $550.
In all other cities, $350.
In boroughs, $200, and
In townships, $100.

The additional license above mentioned, provided for by the Act of 1897, is *for the use of the State.* The *original* license is payable as follows: "In cities the sum of one hundred dollars, in boroughs and townships one-fifth of the amount of license, shall be paid to the treasurers of the respective counties for the use of the counties, and the balance shall be paid to the treasurers of the respective cities, boroughs, and townships for their respective use." Act June 9, 1891 (P. L., p. 248).

The Act of July 30, 1897, also provides as follows:

"It shall be the duty of the treasurers of the respective counties to collect said additional license tax before a license is issued to the applicant applying therefor, and pay the same to the State Treasurer within ninety days from the receipt thereof. It shall also be the duty of the treasurers of the respective counties to pay all license funds collected on account of any municipality to the respective treasurers thereof, on or before the first day of September succeeding the granting of such licenses. Nothing in this section contained shall be construed to change, modify, or alter the existing law in reference to the granting of retail licenses, or the fees paid to the local authorities for the same. It is the intention of this section to impose an additional license tax for the sole use and benefit of the Commonwealth.

"Section 3. Every person intending to apply for license as aforesaid under the provisions of this or any other act of Assembly in any city or county of this Commonwealth, on and after the passage of this act, shall file with the clerk of the court of quarter sessions of the proper county his, her, or their petition, at least three weeks before the first day of the session of the court at which the same is to be heard, and shall, at the same time, pay said clerk five dollars for expenses connected therewith; and said clerk shall cause to be published two times in three newspapers designated by him, one of which may be printed in the German language, a list containing the names of all such applicants, their respective residences, and the place for which application is made; and the cost of publication shall not exceed the usual rates charged by such newspapers; the first publication shall not be less than fifteen nor

more than twenty-five days before the time fixed by the court; Provided, the amount to be paid for such advertisement shall not, in the aggregate, exceed the five dollars provided in this section to be paid by such applicant for expenses."

Brewers' and Distillers' Licenses. The Act of July 30, 1897 (P. L., p. 464), provides:

"That all wholesale dealers, brewers, distillers, rectifiers, compounders, bottlers, store-keepers, and agents, having stores or offices within this Commonwealth, dealing in intoxicating liquors, either spirituous, vinous, malt, or brewed, shall pay for the use of the Commonwealth, for each separate store, brewery, distillery, rectifying, compounding, or bottling establishment or agency, an annual license fee to be ascertained and fixed as follows:"

The number of barrels in the following tables are those produced for the year preceding that for which the license fee is paid. As will be seen in the proper place, new companies or individuals, just beginning business (there being no previous production on which they can be rated), pay a uniform license fee of one thousand dollars for the first year they are engaged in business.

BREWERS' LICENSE FEES.

More than	Less than	Annual license fee.
	1,000 bbls.	$250
1,000 bbls.	2,000 "	300
2,000 "	3,000 "	400
3,000 "	5,000 "	500
5,000 "	10,000 "	750
10,000 "	20,000 "	1000
20,000 "	30,000 "	1250
30,000 "	40,000 "	1500
40,000 "	50,000 "	1750
50,000 "	60,000 "	2000
60,000 "	70,000 "	2250
70,000 "	80,000 "	2500
80,000 "	90,000 "	2750
90,000 "	100,000 "	3000
100,000 "	150,000 "	4000
150,000 "	200,000 "	4500
200,000 "	300,000 "	5000
300,000 "	.....	6000

DISTILLERS' LICENSE FEES.

	50 bbls.	$100
50 bbls.	100 "	200
100 "	200 "	250
200 "	300 "	400
400 "	500 "	500
500 "	3,000 "	1000
3,000 "	5,000 "	1250
5,000 "	10,000 "	1500
10,000 "	20,000 "	1750
20,000 "	.....	2000

All new distilleries and breweries established and located in any part of the Commonwealth shall pay a license of one thousand dollars for the first year.

The said Act of July 30, 1897, further provides that:

"It shall be the duty of every brewer or distiller to file with his application an affidavit, setting forth the number of barrels of vinous, spirituous, malt, or brewed liquors distilled or brewed by him during the year preceding that for which a license is desired, or produce such other evidences as the court or the State Treasurer may require as to the quantity of vinous, spirituous, malt, or brewed liquors manufactured by the applicant during the preceding year, in order that the court or the State Treasurer may fix the amount of license as provided in this act. If the applicant makes a false statement of the number of barrels manufactured during the preceding year, it shall be the duty of the State or county treasurer to petition the proper court, setting forth the false return made by such applicant; whereupon said court shall, after due notice and full hearing to all parties in interest, revoke said license, unless the applicant can satisfy the court that he acted in good faith in making his affidavit, and shall pay to the county treasurer for the use of the Commonwealth the proper amount."

The act also further provides:

"That hereafter any brewer of malt or brewed liquors within this Commonwealth, upon paying into the State Treasury for the use of the Commonwealth the sum of one thousand dollars, annually, shall be licensed by the State Treasurer to sell and deliver, but only to liquor dealers licensed by the courts, the malt or brewed liquors manufactured at said brewery in packages of not less than twelve pint bottles, or in casks of not less than one-eighth barrel; Provided, however, that any individual, firm, or corporation operating more than one brewery, shall pay for each separate brewery so operated the sum of one thousand dollars, annually; Provided, that the amount to be paid to the State Treasurer shall not be less than the amount required to be paid under the brewers' classification, according to amount of product as provided for in this act, and upon payment of said sum into the State Treasury, the State Treasurer shall issue a license as aforesaid, which shall be framed and exposed to view in said brewery.

"Distillers and brewers shall be permitted to deliver their product within the county where the license is granted, and all wagons used for the purpose of delivering spirituous, malt, or brewed liquors, or any admixture thereof, shall have marked on the side thereof the name of the licensee, and the number of his license, in letters and figures not less than four inches in length."

The Act of June 20, 1893 (P. L., p. 474), permits distillers selling their liquors in original packages of not less than forty gallons, to maintain their distilleries without being licensed by the courts on the payment by them to the State Treasurer of one thousand

dollars per annum where the distillery is located in a city; two hundred dollars where it is located in a borough, and one hundred dollars where it is located in a township. Collections of distillers' licenses under this act are, by an arrangement with the county treasurers, made through them, and returned and paid monthly.

Section 5, of the Act of July 30, 1897, provides, however, that so much of the second section of an act, entitled "An act authorizing distillers of spirituous or vinous liquors to sell such liquors of their own manufacture, in original packages of not less than forty gallons, without being required to take out a license as is now required by existing laws," approved the twentieth day of June, Anno Domini one thousand eight hundred and ninety-three, as conflicts herewith, be and the same is hereby repealed. Act of July 30, A. D. 1897.

The Act of June 21, 1897 (P. L., p. 176), provides as follows:

"That hereafter any brewer of malt or brewed liquors within this Commonwealth, upon paying into the State Treasury for the use of the Commonwealth the sum of one thousand dollars annually, shall sell and deliver only to liquor dealers licensed by the court, the malt or brewed liquors manufactured at said brewery in packages of not less than twelve pint bottles, or in casks of not less than one-eighth barrel; Provided, however, that any individual, firm, or corporation operating more than one brewery shall pay for each separate brewery so operated the sum of one thousand dollars. And upon payment of said sum to the State Treasurer, annually, the State Treasurer shall issue a certificate thereof, which shall be framed and exposed to view in said brewery.

"Section 2. Nothing in this act shall be construed to prohibit the brewer obtaining a license to sell at wholesale, as provided by existing law, upon the application to the court of quarter sessions; Provided, however, when any court shall have refused a license for any particular brewery, the sale of said liquors at said brewery shall not be permitted under this act until the expiration of one year after the date of the application for the license which has been refused."

This is substantially re-enacted as a part of the Act of July 30, 1897 (P. L., p. 464), see *supra;* and said Act of July 30th also provides as follows with reference thereto:

"This act shall not be construed so as to in any manner repeal or conflict with an act entitled 'An act providing that the manufacturers who shall pay a certain sum annually into the Treasury of the Commonwealth shall sell only malt or brewed liquors of their own manufacture to dealers only who have been licensed by the court,' approved the twenty-first day of June, Anno Domini one thousand eight hundred and ninety-seven, except that the amount to be paid to the State Treasurer shall not be less than the amount required to be paid under the brewers' classification according to amount of product as provided for in this act; Provided,

that distillers and brewers shall be authorized to make, sell, and deliver in such sized packages as are authorized to be made, sold, bonded, and delivered by distillers and brewers under the laws of this State, or act of Congress assessing and collecting internal revenue taxes upon distilled or brewed liquors by the Government of the United States."

For prior acts relative to licenses of brewers and distillers, see Act of April 10, 1849, Sec. 32 (P. L., p. 576); March 31, 1856, Sec. 1 (P. L., p. 200); April 20, 1858, Sec. 1 (P. L., p. 365); May 24, 1887 (P. L., p. 194), and June 9, 1891 (P. L., p. 257).

Wholesale Liquor Dealers' Licenses. Wholesale dealers in vinous, spirituous, malt, or brewed liquors, or any admixture thereof, shall pay for the use of the Commonwealth an annual license fee as follows:

In cities of the first and second classes, $1000.

In cities of the third class and all other cities, $500.

In boroughs, $200.

In townships, $100.

Act of July 30, 1897 (P. L., p. 464).

The other cities referred to are "Parker City, Lock Haven, Meadville, Corry, Franklin, and Monongahela City." The proceeds of all wholesale licenses are paid to the State Treasurer for the exclusive use and benefit of the Commonwealth. See Acts of May 24, 1887 (P. L., p. 194), and Act of June 9, 1891 (P. L., p. 257).

Rectifiers', Compounders', etc., Licenses. Each rectifier, compounder, storekeeper, or agent not included in the classification for license purposes hereinbefore set out, and who has a store, office, or place of business in this Commonwealth, shall pay for the use of the Commonwealth an annual license fee as follows:

In cities of the first and second classes, $1000.

In cities of the third class and all other cities, $500.

In boroughs, the sum of $200.

In townships, $100.

All of the license fees hereinbefore fixed and regulated shall be collected by the treasurer of the proper county for the use of the Commonwealth, except as hereinbefore provided, and shall be paid by the county treasurer to the State Treasurer for said use within ninety days from the date of the receipt thereof.

Bottlers' Licenses. Each bottler or bottling establishment shall pay for the use of the Commonwealth an annual license fee as follows:

In cities of the first and second classes, the sum of $500.

In cities of the third class and all other cities, $350.

In boroughs, the sum of $250.

In townships, the sum of $125.

Act of July 30, 1897, Sec. 2 (P. L., p. 468). For prior acts see those of June 9, 1891 (P. L., p. 257), and May 24, 1887 (P. L., p. 194).

A licensed bottler selling liquor in a county other than that covered by his license, is liable to the punishment provided for selling without license. Com. *v.* Holstine, 132 Pa., 357.

Brewers, bottlers, distillers, and retail liquor dealers are not assessed by the mercantile appraisers, as formerly, as vendors of merchandise, the recent laws having superseded the old system of mercantile assessments as to all such persons. Com. *v.* Iron City Brewing Company, 146 Pa., 642; *In re* Einstein *et al.*, 29 W. N. C., 214.

Auctioneers' Licenses. Auctioneers are required to pay a license of three per centum upon the gross amount of their annual business, except in Philadelphia County, where the license fee is $500. Licenses therefor are not issued for a less period than one year. See Acts of June 26, 1873 (P. L., p. 332); June 13, 1874 (P. L., p. 284), and March 25, 1873 (P. L. p. 405). See Commonwealth *v.* Crall, 2 Pa. C. C., 240; Nash *v.* Com., 2 C. P. Rep., 239.

Billiard and Pool Tables and Bowling Alleys. Persons maintaining billiard or pool tables or bowling alleys are required to pay licenses as follows:

For the first table or alley, $30.

For each additional table or alley, $10.

See Acts of April 10, 1849 (P. L., p. 570); May 15, 1850 (P. L., p. 772), and April 14, 1851 (P. L., p. 570).

Pool tables are not specifically mentioned in these acts, but it was held in Williams *v.* Com., 12 W. N. C., 471, that pool tables were included within the meaning of the act.

Billiard licenses are not issued for a less period than one year, save in the counties of Bedford, Carbon, and Monroe, where special laws obtain, and in the Borough of Ephrata, Lancaster County (P. L., 1852, p. 281; P. L., 1862, p. 276; P. L., 1860, p. 229). They may be issued at any time and are good for one year from their date of issue. Any person keeping a billiard room or bowling alley or saloon or nine- or ten-pin alley without a proper license is subject to prosecution, and liable, on conviction, to fine and imprisonment. Act of May 15, 1850, Sec. 2 (P. L., p. 772).

"The mercantile appraiser shall make return to the county treasurer of all persons keeping such tables, at the time of making his annual returns, as provided by law, . . . which return of the keepers of such tables shall be made on the first Monday of June." Section 10, Act of May 11, 1853.

Where a pool table is kept by a tavern-keeper, without charge for its use, but solely for the use and amusement of his guests, but to bring in a profit on the cigars and drinks sold to persons using the table, the license tax is payable. Williams *v.* Commonwealth, 12 W. N. C., 471.

Brokers' Licenses. "All stock brokers, bill brokers, exchange brokers, merchaudise brokers, and real estate brokers, for their respective commissions or license granted, shall pay three per cent.

upon their annual receipts from commissions, discounts, abatements, allowances, or other similar means used in the transaction of their business." Act of May 15, 1850, Section 7 (P. L., p. 773).

The same act further provides:

"The appraisers of mercantile licenses . . . are hereby authorized and required to ascertain and assess the several brokers aforesaid according to the amount of business done by them respectively, in the same manner as is required of them with regard to vendors of merchandise, and the said several brokers shall be entitled to the same proceedings, on an allegation that they are not properly taxed, as are now provided . . . in the case of vendors of merchandise." Section 8.

"Provided, that in classifying said brokers, when any individual or copartnership desires to obtain a commission or license to carry on business at the same time in more than one of the kinds of brokers named in the first part of Section 6 of this act, the amount of annual receipts of said individual or copartnership in each particular order shall be estimated for the purpose of fixing the class as aforesaid, and separate commissions shall be issued for each kind of brokers, as now provided by law." Section 9.

This license tax is in addition to the tax of three per centum upon their net earnings or income, imposed by Section 4 of the Act of May 16, 1861 (P. L., p. 708), and its supplement of June 27, 1895 (P. L., p. 396). The latter act relieved real estate brokers from the payment of the tax on their net earnings or income, but still left them subject to the license fee above mentioned. Said latter act is constitutional. Pittsburg *v.* Coyle, 165 Pa., 61.

A factor, or produce commission merchant, is not taxable as a broker, but as a vendor of merchandise. See Hunter's Appeal, 16 W. N. C., 478.

A real estate broker is one who holds himself out to the public as engaged in the purchase and sale of real estate as an occupation. A person agreeing to find a purchaser for a given lot of real estate does not thereby become a real estate broker. Chadwick *v.* Collins, 26 Pa., 138.

A "street broker" is a bill broker. Com. *v.* Holmes, 11 Pa., 468.

Peddlers. Peddlers' (hawkers and peddlers by wagon and on foot) licenses, as per treasurer's return of the same, per Act of April 2, 1830 (P. L., p. 147):

To travel on foot, $8.

To travel with one horse and wagon, $16.

Two horses and wagon, $25.

Wholesale License. To travel with one horse and wagon, $50.

Two horses and wagon, $50.

Special acts governing peddlers' licenses are so numerous that

no one should attempt to peddle in a given county without making special inquiry as to the acts locally in force. See Act April 16, 1846, Sec. 1 (P. L., p. 433).

——— Soldiers' Peddlers' Licenses, per Act of April 8, 1867 (P. L., p. 50). To procure such license the applicant—

1. Must be a resident of the State.

2. Must be suffering from disability, the result of wounds or disease contracted while in the military or naval service of the United States, and unable to procure a livelihood by manual labor, and must procure—

(1) Certificate from an examining surgeon of the United States (see Section 2), and (2) certificate from the prothonotary of any county in the State that he has filed in said office an affidavit that he is the owner of the goods, etc., he intends to sell.

The aforesaid certificates, with his discharge from military service, are conclusive evidence of his right to the benefits of the act above cited.

Eating-House Licenses. Eating-house licenses must be taken out for eating houses, restaurants, cafés, and oyster saloons where spirituous or malt liquors are *not* sold, per Sections 20, 21, 22, and 23, Act of April 10, 1849 (P. L., p. 574).

The following is an extract and classification under the above act:

"That no person shall hereafter keep any beer house, eating house, restaurant, or oyster cellar, other than hotels now authorized by law to be licensed and kept, wherein beer, ale, or other malt liquors, or oysters, or other refreshments of any kind whatsoever are dressed, prepared, or sold, without first applying for and obtaining a license from the county treasurer of the proper city or county, and for which the keepers thereof shall pay respectively the sums hereinafter provided, to wit:

Class.	Sales.	License.
8	$500 to $1,000	$5 00
7	1,000 to 2,000	10 00
6	2,000 to 3,000	12 00
5	3,000 to 5,000	20 00
4	5,000 to 10,000	30 00
3	10,000 to 15,000	75 00
2	15,000 to 20,000	125 00
1	20,000 and over.	200 00"

See *supra*, page 213.

Circus, Theatre, etc. "An Act to provide for the licensing of buildings and other places in which theatrical, operatic, or circus performances are held, and menageries or museums are exhibited, and fixing the price to be paid for said licenses, and providing for the licensing of circuses and menageries exhibiting in tents and enclosures of like character.

"Section 1. *Be it enacted, etc.*, That from and after the passage of this act the owner or owners or lessee or lessees, according to agreement between said owner or owners and lessee or lessees, of a building or buildings, the whole or part of which are fitted up and used for theatrical or operatic entertainments, or for the exhibition of museums, shall pay to the use of the Commonwealth, an annual license at the following rates, viz.: In cities of the first class, *five hundred dollars;* in cities of the second class, *four hundred dollars;* in cities of the third class, *seventy-five dollars*, and in all boroughs and townships, *thirty dollars.* For circuses and menageries the price of a license shall be the same as hereinbefore required to be paid by the owners of buildings used for theatrical and operatic performances, or the exhibition of museums when exhibited in a building, the license to be paid by the owner or owners of said building; when the exhibition shall be given in a *tent or enclosure* of like character, the license to be paid by the proprietor or proprietors of the circus or menagerie. Any person, being the proprietor of a circus or menagerie which shall exhibit in a tent or enclosure of like character, *desiring a license* for the exhibition of the said circus or menagerie for *the whole State for one year*, shall be entitled to receive the same upon the payment of one thousand dollars, to be paid to the treasurer of any county in the State, to the use of the Commonwealth, and the provisions of this act hereinbefore contained shall not be held to apply to such circus or menagerie paying such license for the whole State. The licenses hereinbefore provided for shall be granted by the treasurer of the proper county upon receiving the price of the same, the payment whereof shall entitle the person or persons paying the same to the use of the privileges conferred by this act. If any owner or owners or lessee or lessees of a building or buildings, the whole or part of which are fitted up and used for theatrical or operatic entertainments or for the exhibition of museums, or the owner or owners of a building or buildings in which a circus or menagerie may be exhibited, or the proprietor or proprietors of a circus or menagerie exhibiting in a tent or enclosure of like character, shall hold or allow to be held in such building or buildings, tent or enclosure any theatrical or operatic entertainment, or the exhibition of any museum, menagerie, or circus within any city, borough, or township in this Commonwealth, without first having had and obtained a license as aforesaid, he or

Theatres and museums must pay a license.

Amount of license.

Circus or menagerie.

Amount of license.

Who shall grant licenses.

Penalty for exhibiting without a license.

they so offending shall be liable to indictment, and upon conviction thereof shall pay for each such offence a fine of not less than one hundred dollars nor greater than five hundred dollars, at the discretion of the court trying said offence, all such fines to be paid into the treasury of the county wherein such conviction shall take place.

Licenses herein provided for to be in lieu of all licenses hereinbefore required.

"Section 2. The licenses hereinbefore provided for shall be in lieu of all licenses hereinbefore required by law to be paid for the use of the Commonwealth by the owners of buildings or other places in which theatrical, operatic, or circus performances are held, or museums or menageries are exhibited, or by any theatrical, operatic, circus, menagerie, or museum company or troupe or by the manager or managers, proprietor or proprietors thereof.

Shall not exempt from any city or borough license.

"Section 3. The provisions of this act shall not exempt any theatrical or operatic company, or circus, or menagerie, or museum from the payment of such taxes as may be imposed upon them by any city or borough in this Commonwealth in accordance with any ordinance duly enacted in relation thereto.

Repeal.

"Section 4. All acts or parts of acts or supplements thereto inconsistent with the provisions of this act are hereby repealed."

Approved the twenty-fourth day of June, A. D. 1895.

See Acts of April 16, 1845, Sec. 2 (P. L., p. 533); May 15, 1850, Sec. 5 (P. L., p. 773); April 15, 1851 (P. L., p. 249), and June 24, 1895 (P. L., p. 149), *supra*.

Under an opinion of the Attorney-General, any person paying license under this act is not required to pay any fee to the mercantile appraiser, nor to the county treasurer, as under former laws.

Stevedores. The Acts of April 6, 1870 (P. L., p. 958), and May 27, 1871 (P. L., p. 1255), require persons engaged in the business of stevedoring in Philadelphia to take out an annual license, for which they are required to pay $200 into the State Treasury. They are also required to give a bond in the sum of $15,000 as security for the payment of wages to their employés, and as security for any damage to ship or cargo arising from the neglect of the stevedore or his employés. An application is filed with the Auditor-General, accompanied by a certified copy of the bond, and if the Auditor-General is satisfied with the sureties on the bond, he issues the license in question.

For some reason or another, these acts are, and have always been, inoperative and of no effect, probably because the punitory portions of the acts are not sufficiently broad to compel a compliance with their provisions. It is not known that the acts have ever been the subject of judicial construction. They have never been enforced, and are, to all intents and purposes, void and of no effect.

CHAPTER XVII.

FEES OF OFFICE.

Acts of March 10, 1810 (P. L., p. 77); April 5, 1842 (P. L., p. 236); April 2, 1868, Sec. 8 (P. L., p. 125); April 6, 1871 (P. L., p. 476); March 6, 1872 (P. L., p. 208); May 6, 1874, Sec. 1 (P. L., p. 125); March 31, 1876 (P. L. p. 13), and June 12, 1878, Sec. 13 (P. L., p. 195).

The Act of March 10, 1810 (P. L., p. 79), provides as follows:

"Section 1. That the prothonotaries or clerks of the Supreme Court, of the courts of *nisi prius*, of the courts of common pleas, of the courts of oyer and terminer and general gaol delivery, of the courts of quarter sessions of the peace, of the orphans' courts, the registers of wills, and the recorders of deeds in this Commonwealth shall, from and after the first day of October next, keep, or cause to be kept, a fair and accurate account of all the fees received for services performed by them, or any person employed by them in their respective offices; and shall annually thereafter furnish a copy of such account, upon oath or affirmation, to the Auditor-General, who shall proceed to examine the accounts so furnished by the officers aforesaid, and whenever the amount of any of the said accounts shall exceed the sum of fifteen hundred dollars, the Auditor-General shall charge the said officers respectively fifty per centum on the amount of such excess; which sum so charged, shall be paid by them into the Treasury for the use of the Commonwealth.

"Section 2. That if two or more of the said offices shall be held by one person, the Auditor-General shall add together the fees received in the offices so held, and shall charge the same percentage on the aggregate amount of the fees received by such persons as is directed in the first section of this act, to be paid as therein directed," etc.

By the Act of April 5, 1842 (P. L., p. 236), the county officers of Philadelphia County were permitted to deduct their clerk hire and necessary expenses, as well as fifteen hundred dollars each, from the gross amount of their receipts which they were to divide with the Commonwealth. This provision did not extend to other counties.

Section 8 of the Act of April 2, 1868 (P. L., p. 11), provides:

"The prothonotary or clerk of the Supreme Court, courts of common pleas, of the courts of *nisi prius*, of the courts of quarter sessions of the peace, of the orphans' courts, the registers of wills,

and the recorders of deeds of this Commonwealth shall pay into the Treasury for the use of the Commonwealth, after deducting all necessary clerk hire and office expenses, fifty per centum on the amount of any excess over and above the sum of two thousand dollars, which shall be found, by the auditor appointed by the court to settle the accounts of county officers, to have been received by any office in any one year; Provided, if two or more of said offices shall be held by one person, the Auditor-General shall add together the fees received in the offices so held, and shall charge the same percentage on the aggregate amount of fees received by such persons holding more than one of said offices."

This act did not apply to the Counties of Allegheny, Lancaster, Montgomery, Philadelphia, Beaver, and Washington.

It will be observed that the Act of 1868 differs from the Act of 1810 in providing for an exemption from the division of receipts, of salaries of two thousand dollars, instead of fifteen hundred, and permits the deduction of office expenses and clerk hire, which had hitherto only been permitted to the officers of Philadelphia County, under the Act of 1842.

The counties named above, being exempted from the provisions of the Act of 1868, remained under the provisions of the Act of 1810.

The Act of April 6, 1871 (P. L., p. 476), and its supplement of March 6, 1892 (P. L., p. 208), provided that the officers of Allegheny County should receive salaries, as fixed therein, and that all fees received by them should be paid to the uses of the county. It was recently contended by the accounting officers that this act transferred to the County of Allegheny only the right in such receipts which the said county officers had formerly possessed, and that the County of Allegheny should, therefore, pay the State one-half of its net receipts from the fees of these officers. The court held, however, in Com. *v.* Allegheny Co., 168 Pa., 303, that the Act of 1810, as applied to the County of Allegheny, was wholly repealed by the above Act of 1871, and that no part of the receipts derived by the county from the fees of its county officers is due to the Commonwealth.

The Act of May 6, 1874 (P. L., p. 125), provides:

"That in counties of less than one hundred and fifty thousand inhabitants, the prothonotaries or clerks of the Supreme Court, courts of common pleas, of the courts of *nisi prius*, of the courts of quarter sessions of the peace, of the orphans' courts, the registers of wills, and the recorders of deeds of this Commonwealth shall pay into the Treasury for the use of the Commonwealth, after deducting all necessary clerk hire and office expenses fifty per centum on the amount of any excess over and above the sum of two thousand dollars, which shall be found, by the auditor appointed by the court to settle accounts of county officers, to have been received by any office in any one year; Provided, if two or more of said offices shall be held by one person, the Auditor-General

shall add together the fees received in the office so held, and shall charge the same percentage on the aggregate amount of fees received by such person holding more than one of said offices."

This act has been generally considered as unconstitutional, although, as it appears later, its validity is specifically upheld in Com. *v.* Anderson, 178 Pa., 171.

The Act of March 31, 1876 (P. L., p. 13), provides that in all counties containing over one hundred and fifty thousand inhabitants "all fees limited and appointed by law to be received by each and every county officer therein elected by the qualified voters of their respective counties . . . shall belong to the county in and for which they are severally elected."

This act put the officers of the County of Philadelphia on a similar footing with those of Allegheny County, and the accounting officers made a similar attempt to collect from Philadelphia County one-half of the net amount of fees received by said county from the county offices thereof. The Supreme Court held, however, in the case of Com. *v.* Mann *et al.*, 168 Pa., 290, that the above mentioned Act of 1876 wholly repealed the Acts of 1842 and 1810, so far as Philadelphia County is concerned, and that no part of the receipts of county officers paid to the county was due to the Commonwealth.

The Act of June 12, 1878 (P. L., p. 187), which fixes the fees of the various county officers, provides as follows:

"And provided further, that the prothonotaries of the several courts and the registers of wills shall pay into the State Treasury fifty per centum of all fees received by them yearly in excess of two thousand dollars, clerk hire, and stationery."

Auditing Receipts from Fees. Section 10 of the Act of April 21, 1846 (P. L., p. 415), provides that the courts of common pleas of each county, during the last term of the court preceding the first day of January in each year, shall appoint one competent person as an auditor to examine the accounts and dockets of the prothonotary, register, and recorder and clerks of the several courts of the county, and shall determine the whole amount of fees charged, as well as the whole amount of fees received by each of said officers during the preceding year, and report the same to the Auditor-General. The Auditor-General is to see that the provision is carried into effect and to fill all vacancies which may occur in the office of auditor.

NOTE.—This service was formerly performed by the county auditors, under previous acts. The said auditors not only ascertain the amount of fees received, but also the amount received from taxes on writs, wills, etc., which tax is considered in the next chapter. They also ascertain the amount of collateral inheritance tax received by the registers of wills, and report all these data to the Auditor-General.

The report of a special auditor under the Act of April 21, 1846 (P. L., p. 415), to pass upon the accounts of public officers, is not

such an adjudication as will require the Commonwealth to appeal therefrom, or, in default of an appeal, be concluded thereby.

Com. *v.* David R. Anderson, Register and Recorder and Clerk of Orphans' Court of Fayette County, Appellant, 178 Pa., p. 171.

The Act of May 6, 1874 (P. L., p. 125), relating to the compensation of clerks of orphans' courts, registers of wills, recorders of deeds, etc., does not violate Article IX. of the Constitution, providing for uniformity of taxation, nor Article III., Sec. 7, forbidding the Legislature to pass any local or special law regulating the affairs of counties. *Ibid.*

The Act of May 6, 1874 (P. L., p. 125), requires "that the clerks of orphans' courts, registers of wills, recorders of deeds, etc., of this Commonwealth shall pay into the treasury for the use of the Commonwealth, after deducting all necessary clerk hire and office expenses, fifty per centum of the amount of any excess over and above the sum of two thousand dollars, which shall be found, by any auditor appointed by the court to settle the accounts of county officers, to have been received by any office in any one year. Provided, if two or more of said offices shall be held by one person, the Auditor-General shall add together the fees received in the offices so held, and shall charge the same percentage on the aggregate amount of fees received by such person holding more than one of said offices." *Held*, that, in ascertaining what amount should be paid to the Commonwealth by a person holding two offices, only one salary should be deducted from the gross receipts. *Ibid.*

Clerk Hire and Office Expenses. County officers are not permitted to deduct whatever amount may seem to them proper on account of clerk hire and office expenses, but the Auditor-General requires them to report annually their expenses for these items, and determines as to the reasonableness of the same. If he deems the expenses too great, he allows of the deduction from the gross receipts of only such amount as he considers proper.

CHAPTER XVIII.

TAX ON WRITS, WILLS, DEEDS, ETC.

A STATE tax of three dollars and a half is imposed on every writ of error issued or appeal granted by the Supreme Court, and a tax of fifty cents on every writ issued by the inferior courts, and of twenty-five cents on every transcript of a judgment of a justice of the peace or alderman. Recorders of deeds are required to collect for the use of the State fifty cents for every instrument offered for record. Registers of wills collect for the State fifty cents for the probate of each will, and the same amount for granting letters of administration. A State tax of ten dollars is levied on the commissions of inferior officers of cities and counties, such as sheriffs, clerks of courts, health officers, etc. Acts of April 6, 1830 (P. L., p. 273); March 15, 1832, Secs. 35–37 (P. L., p. 145); April 16, 1845, Sec. 16 (P. L., p. 534), and March 15, 1847, Sec. 2 (P. L., p. 355).

The Act of May 14, 1874 (P. L., p. 175), provides:

"Section 1. The Treasurer of the City of Philadelphia, and all county and city treasurers, every recorder of deeds, register of wills, prothonotary, clerk of the court of quarter sessions, and clerk of orphans' court in the Commonwealth, are hereby required to render the Auditor-General and State Treasurer quarterly returns of all moneys received by them for the use of the Commonwealth, from (1) tax on original writs, (2) judgments, (3) amicable actions, (4) certiorari, (5) and transcripts from justices of the peace, as now provided by law, designating under proper heads the source from which the money was received; and all such moneys so collected shall be paid into the State Treasury quarterly, or oftener, if required by the State Treasurer.

"Section 2. The quarterly returns provided for in the preceding section shall be rendered by the Treasurer of Philadelphia, and all county and city treasurers, and all other county officers named therein, on the first Monday of July next, and quarterly thereafter.

"Section 3. Any officer who shall refuse or neglect to make the returns and pay over the amount due the Commonwealth within thirty days, as required by the preceding section of this act, shall forfeit his fees and commissions on the whole amount of money collected during the quarter; and in case the return is not made within thirty days after such return is due, and the mouey due the

Commonwealth paid into the State Treasury, a penalty of ten per cent. shall be added to the amount of tax found due.

"Section 4. The State Treasurer and Auditor-General (or any agent appointed by either of them) are hereby authorized to examine the accounts of every county officer who shall refuse to make the returns within the time specified as required by the third section of this act, and upon the report of such agent shall proceed to settle an account against such officer in the same manner that accounts are now settled by county officers; Provided, that if the amount of said account is not paid into the Treasury within fifteen days from date of settlement, the said account shall be placed in the hands of the Attorney-General for collection, and shall bear interest from fifteen days after date of settlement, at the rate of twelve per centum per annum; And provided further, that to every such account settled, fifty per cent. on the amount due the Commonwealth shall be added, to include any losses which might otherwise accrue to the Commonwealth from such neglect or refusal to furnish the returns and pay over the amount found due.

"Section 5. The State Treasurer may, if he deem it conducive to the public interest, proceed immediately against the sureties of any officer who shall neglect to render his returns and pay over the amount due the Commonwealth."

The auditor appointed by the court, referred to in the previous chapter, ascertains the amounts received by the several county officers under the acts above given, and reports the same to the Auditor-General, thus furnishing a check on the returns made by the officers themselves.

Fees of State Officers. Beside the revenues heretofore enumerated in this work, the Commonwealth receives certain amounts from the fees of the different State officers, established by law, which they pay into the State Treasury quarterly. The acts providing for the fees to be paid to the different officers are, respectively, as follows:

Fees of Attorney-General: Acts of February 22, 1821 (Sm. L., 367), and May 14, 1857 (P. L., p. 507).

Fees of Auditor-General: Act of April 1, 1837 (P. L., p. 132).

Fees of Secretary of the Commonwealth: Act of April 27, 1871 (P. L., p. 242).

Fees of Secretary of Internal Affairs: Act of April 15, 1873 (P. L., p. 75).

Fees of State Treasurer: Act of April 22, 1846 (P. L., p. 486).

Other fees are provided for in the acts creating other State offices.

CHAPTER XIX.

LOCAL TAXATION.

THE following brief statement relative to county and municipal taxation in this Commonwealth is given for the information of residents of other States who may desire to know something of the entire tax system of Pennsylvania. But the very briefest sort of a sketch is attempted, for the sufficient reason that the subject of local taxation does not come within the true scope of this work, and, for the still better reason that the author professes no special knowledge upon this topic, and is not sufficiently informed in regard thereto to speak at length with any manner of authority upon the subject.

Taxation for County Purposes. County taxes are collected on the basis of an assessment made triennially under the authority of the commissioners of the several counties. In every third year the said commissioners issue their precept to the assessors of the respective townships, wards, and districts, requiring them to make out and return within thirty days thereafter a just and perfect list, in such form as the commissioners shall direct, of the names of all the taxable persons residing within their wards, townships, and districts, respectively, and of all property taxable by law, together with a just valuation of the same, to be made in the manner hereafter directed. Act April 15, 1834 (P. L., 509); Act May 15, 1841 (P. L., p. 393); Act April 20, 1897 (P. L., p. 28).

The assessors on the receipt of such precepts proceed to take an account, in the form directed by law, of the names and surnames of all the taxable inhabitants within their respective wards, townships, and districts, and also an account of the following real and personal property:

1. Real estate, viz.: All houses, lands, lots of ground, and ground-rents, mills and manufactories of all descriptions, all furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan-yards, and ferries.

2. The following personal estate, viz.: All horses, mares, geldings, and cattle above the age of four years.

3. All offices and posts of profit, professions, trades, and occupations, and all single freemen above the age of twenty-one years who shall not follow any occupation or calling. Act April 15, 1834 (P. L., p. 509); Act April 29, 1844 (P. L., p. 486), Sec. 32.

So much of the real estate of public corporations as may be essential to the exercise of their corporate franchises is exempt

from all county and local taxation. R. R. Co. *v.* Berks Co., 6 Pa., 70; Lehigh Coal & Nav. Co. *v.* Northampton County, 75 Pa., 461; Erie County *v.* Western Trans. Co., 87 Pa., 434; Coatesville Gas Co. *v.* Chester Co., 97 Pa., 476. The tracks, depots, rolling stock, etc., of railroad companies are, therefore, exempt from taxation for local purposes, but the property of such public corporations which is *not* essential to the exercise of their corporate privileges is so taxable. Corporations formed for private purposes can claim no exemption. Carbon Iron Co. *v.* Carbon County, 39 Pa., 251. Machinery so attached as to become fixtures is taxable as real estate. Patterson *v.* Del. Co., 70 Pa., 381.

Written notice of the assessment is given to each taxable, and a date is fixed on which the taxable may appear before the county commissioners, if dissatisfied with his assessment, and seek to have it corrected. Taxables may appeal from the decision of the county commissioners to the court of common pleas of the proper county. The rate of tax is such as may be established by the county commissioners of the several counties.

Municipal Taxes. Cities of the first and second classes, of which Philadelphia is the only example of the first and Pittsburg and Allegheny are the only examples of the second, have systems of their own, a description of which would fill a work devoted wholly to that subject. No attempt is here made to describe those systems further than to say that the objects of taxation are, in the main, those subject to county taxation.

Cities of the third class, to which class all other cities in the Commonwealth belong, collect taxes as follows:

Every city of the third class in its corporate capacity is authorized and empowered to enact ordinances for the following purposes, in addition to other powers: 1. To levy and collect taxes for general revenue purposes, not to exceed ten mills on the dollar in any one year, on all persons, and real, personal, and mixed property within the limits of said city, taxable according to the laws of the State of Pennsylvania for county purposes. Act May 23, 1889 (P. L., p. 277).

Such cities elect a board of three city assessors, who serve for three years. Triennial assessments are made, and notices of assessment given in writing to taxables, who have the right of appealing from their assessment to a board of appeals, consisting of five persons, appointed by the councils of such city in joint convention, two of whom shall be members of select council and three of the common council.

Cities of the third class may also collect, for general revenue purposes, a license tax not exceeding one hundred dollars each, annually, on all auctioneers, contractors, druggists, hawkers, peddlers, produce or merchandise vendors, bankers, brokers, pawnbrokers, merchants of all kinds, persons selling or leasing goods upon instalments, grocers, confectioners, butchers, restaurants,

bowling alleys, billiard and other gaming tables, drays, hacks, carriages, omnibuses, carts, wagons, street railway cars, and other vehicles used in the city for hire or pay, lumber dealers, including commission men and all persons who make a business of buying lumber for sale at wholesale or retail, furniture dealers, saddle or harness dealers, stationers, jewellers, livery or boarding stable keepers, real estate agents, agents of fire, life, or other insurance companies, market house companies, express companies or agencies, telegraph, telephone, steam heating, gas, natural gas, water, electric light or power companies or agencies, or individuals furnishing communication, light, heat, or power by any of the means enumerated, and to regulate the collection of the same. Act May 23, 1889 (P. L., p. 227). Also to license and collect a license tax from all skating rinks, operas, theatres, concerts, shows, circuses, menageries, and all kinds of public exhibitions for pay (except those for local, religious, educational, or charitable purposes), to regulate the same, and to restrain all exhibitions of indecent or immoral character. Also to collect a license from persons who may be authorized to occupy any portion of the streets or sidewalks for temporary public market purposes, and to tax dogs. *Ibid.*

Taxation in Boroughs. Every borough within this Commonwealth . . . shall have power . . . to levy and collect annually for borough purposes any tax not exceeding one-half cent on the dollar on the valuation assessed for county purposes, as now is or may be provided for; all property, offices, professions, and persons made taxable by the laws of this Commonwealth for county rates and levies shall be taxable after the same manner for borough purposes. Act April 3, 1851 (P. L., p. 320). They may also tax dogs and collect licenses on all hacks, carriages, omnibuses, and other vehicles used in carrying persons or property for pay.

Taxation in Townships. It shall be lawful for the supervisors of any township to lay a rate of assessment not exceeding one cent on the dollar, upon real and personal estate, offices, trades, and occupations, for the purpose of laying out, opening, making, amending, or repairing of roads, highways, and for the making or repairing of bridges, and for such other purposes as may be authorized by law. Act April 15, 1834 (P. L., p. 509).

In every case in which a rate or assessment shall be laid for township purposes, the same shall be levied upon the basis of the last adjusted valuation made as aforesaid for the purpose of regulating county rates and levies. *Ibid.*

It shall be lawful for the overseers of the poor in any township, having first obtained the approbation of two justices of the peace of the county, to lay a rate or assessment not exceeding one cent on the dollar at one time upon all real and personal estates within such township. *Ibid.*

All moneys at interest, bonds, mortgages, moneys owing by solvent debtors, shares of stock, etc., are exempt from local taxation,

being taxable exclusively for State purposes. But see pages 151 and 163. The property of corporations is taxable in the same manner as that of individuals, save that, as above noted, the property of public corporations which is essential to the exercise of their franchises, is exempt.

Reports of the amount of the various classes of property subject to taxation for county purposes are annually made to the Secretary of Internal Affairs by the commissioners of the several counties, for purposes of publication in his annual report.

School taxes are collected under the authority of the boards of directors or comptrollers of the various school districts. For the purpose of enabling such boards to assess and apportion the tax for the ensuing school year, the county commissioners shall, when required, furnish the president or secretary of the board with a copy of the last adjusted valuation of proper subjects and things made taxable for county purposes, which said property, subjects, and things are hereby made taxable for school purposes. Act May 8, 1854, Sec. 29 (P. L., p. 224).

The following taxes are collectible for school purposes:

1. The rate tax on real estate.

2. The rate tax on such trades, occupations, professions, and salaries and emoluments of office as will yield one dollar by the rate on its valuation.

3. A minimum occupation tax of one dollar on all resident male taxables over twenty-one years of age, whose assessed occupation at the rate levied for school purposes will not produce one dollar.

Beside the revenues derived from these taxes for local purposes, three-fourths of the State tax on personal property is returned by the State, as we have already seen, to the counties for their use and benefit. We have also seen that all retail liquor license fees (except the additional license fee imposed by the Act of 1897) are paid to the various county and municipal governments, in the proportions heretofore stated.

The State also pays the enormous sum of $5,500,000 annually toward the support of the public schools and, further, pays the salaries of all the judges of courts of common pleas, makes annual appropriations to local charitable associations, and otherwise assumes expenses which in other States are defrayed by local taxation.

The tax on the wages of unnaturalized persons employed in Pennsylvania, imposed by Act of June 7, 1897 (P. L., p. 135) is for county, and not for State, purposes. The State Accounting Officers have, therefore, nothing to do with the assessment or collection of said tax, which comes wholly within the province of the county commissioners. See the said act in the Addenda.

CHAPTER XX.

INSTRUCTIONS TO OFFICERS OF CORPORATIONS.

Registration in the Office of the Auditor-General. Immediately upon the receipt of the charter of a corporation, or on the filing of the articles of association of a limited partnership, association, or joint-stock company, the officers of such corporation or association should register in the office of the Auditor-General, under Section 19 of the Act of June 1, 1889 (P. L., p. 420), the name of the company or association, date of incorporation or organization, act of Assembly, or authority under which formed, incorporated, or organized, the place of business, the post-office address, and the names and addresses of the president or chairman, secretary, and treasurer, or cashier, the amount of capital authorized by its charter, and the amount of capital paid in.

The section referred to says that no company shall "go into operation" until this is done, under a penalty of $500 for failure so to do. The words quoted are sometimes construed to mean that a company need not register until it has begun business. This, however, is not the proper interpretation. A corporation "goes into operation" as soon as it is invested with corporate powers or exercises the smallest of such powers. A company is taxable from its incorporation; the registry is intended to furnish the Auditor-General with sufficient data whereby he can reach the company and send it proper blanks on which to make its reports; there is no fee for registering, and there is, therefore, no hardship in construing the section as above.

Blank registries, through the courtesy of the Secretary of the Commonwealth, are enclosed with each charter mailed from his office, with instructions for filling the same up. Where, however, such blanks are not received, instead of preparing a registry without the use thereof, applications should be made therefor to the Auditor-General, stating whether the forms are required for corporations or for limited partnership or joint-stock associations, when they will be promptly furnished.

Foreign corporations should also register, as soon as they have any capital invested in Pennsylvania, in the same manner. In such cases a note should be added to the regular forms setting forth what amount of capital is invested in this State.

All changes either in the names or in the addresses of the officers of corporations, and all changes of the dates of the annual meeting of the directors, and of the annual meeting of the stockholders,

and all changes of the location of the principal office of a company should be promptly reported, under the hands and seals of the officers, to the Auditor-General, under the same penalty of $500 for failure so to do, mentioned above.

Bonus. Since the passage of the Act of 1897, making the entire amount of the bonus due by a company payable before its charter issues, this subject is much simplified; but officers of banks and savings institutions, co-operative associations formed under the Act of 1887, and insurance companies having capital stock should remember, at the expiration of one year from date of incorporation, to pay the second instalment, or moiety of bonus; also to pay the first instalment of bonus on the authorized amount of each increase of capital stock, at the rate of one-eighth of one per cent. on each dollar of such authorized increase, as soon as the authority to increase has been granted, and the other instalment of like amount at the end of one year from said date. This also applies, as to *increases* of capital, to companies incorporated prior to the passage of the Act of April 29, 1874.

When Reports Should be Made. The times for making reports for purposes of taxation are as follows:

Insurance companies are required to report their gross premiums from business transacted within this Commonwealth—*i. e.*, the amount of premiums and assessments received by each company or association, for the periods ending June 30th and December 31st, respectively, in each year, and their reports must be made within thirty days from the said dates, respectively.

Transportation, transmission, and electric light companies are required to make reports of their gross receipts for the periods ending June 30th and December 31st, and their reports must also be made within thirty days of said dates, respectively.

The companies above named, and all other taxable corporations except banks, savings institutions, and foreign insurance companies, are required to make reports of their capital stock for the year ending with the first Monday of November, and reports of their loans for the year ending with December 31st. These reports must be made on or before December 31st of each year, and if not so made, a penalty of ten per cent. of the tax is added to such tax.

Banks are required by the Act of June 15, 1897, to make but one report in each year, and that for the year ending June 30th; but as almost all banks will elect to collect from the shareholders and pay, or pay from the general funds of the banks, the four-mill tax on the actual value of their shares, provided by said act, on or before the first day of March in each year, in order to attain the exemption from the tax on personal property of their bonds, mortgages, etc., they will when so paying be required to make a report, as was the case when the optional eight-mill tax was paid, on or before the same date. See page 101.

Unincorporated banks and savings institutions subject to the

tax on net earnings or income must make their reports for the year ending with the first Monday of November in each year, and the said reports must be made on or before the thirty-first day of December following. For reports of foreign insurance companies see page 105. As to reports of building and loan associations, and of express companies, for payment of the new excise tax, see pages 118 and 123, respectively.

Blanks on which to Make Reports. Blanks are sent to the treasurers of all corporations in time for them to make the reports above named. Where they are not received the officers of the company not receiving them should make application therefor, and at the same time should assure themselves that the names and addresses of the officers of their company are properly registered. Where blanks are not received, it is usually because the officers of the company have been changed, without due notification given, or that the officers have changed their addresses, or that these data were not correctly given in the registry of the company.

It often saves a great deal of annoyance for corporations to retain copies of all the reports made by them, and extra blanks are furnished for this purpose.

Circulars giving all the information essential to a proper filling up of the blank reports are sent with such blanks, and these should be carefully read, instead of being thrown into the waste-paper basket, which is too often the disposition made of them.

Reports Must be Made in All Cases and Under All Circumstances. The fact that a company had no loans outstanding, or had no gross receipts or gross premiums for a given period, or that the capital stock of a company is worthless, will not relieve it from the duty of making reports. Where a company has had no indebtedness outstanding during the tax-year, its treasurer should so report, in due form, under oath, on the Loan Report Blanks; so also where an insurance company has had no gross premiums for the six months for which the report is required, it should report the fact, on the proper blank, formally and under oath. If a transportation, transmission, or electric light company have no gross receipts for a given period, that fact should be formally reported under oath. If the company is leased to another company, which operates it, its formal, sworn report should set forth that it is leased to such company, and that its gross receipts for said period are included in the report of the company to which it is leased (giving its name) for said period. Where the stock of a corporation has no value, it should be appraised as of "no value" by two officers of the company, under oath, and in due form. Officers of corporations should, however, take notice that it is the "actual" value at which they are required to assess and appraise the stock, and an appraisement that the stock "has no market value" will not be accepted. Instructions as to the appraisement of capital stock will be found in Chapter III.

The fact that a company is not in operation, or even that it has been abandoned, will not relieve its officers from the duty of making capital stock reports. A company can only be dissolved by a decree of court for that purpose had and obtained, and until such decree is obtained reports of all varieties, required of its class of companies, must be made. Where companies cease to exist by reason of the expiration of the periods fixed in their charters, or forfeit their charters by non-user, affidavits establishing these facts should be promptly filed in the Auditor-General's Department. Officers failing for three consecutive years to make reports of capital stock are subject to fine and imprisonment. In such cases the stock should be appraised as of "no value," and steps be taken to secure the dissolution of the company. The reports should be entirely filled in, and answers to interrogatories should not be indicated by dashes or wave lines. Where this is done, the reports are returned for correction. Reports must be made for the periods specified by law in all cases, except where reports are made from the date of incorporation of a company to the next period of making report, or where they are made from the end of one period for reporting to the date of dissolution of the company, or to the date of applying for a decree of dissolution, occurring before the end of the next period for making report. Companies cannot be allowed to make their reports to coincide with their fiscal years, where these do not coincide with the tax-year; and where, owing to the fact that the reports are not made for their fiscal years, certain data cannot be exactly given, they will estimate such data according to their best knowledge and belief.

Where the affairs of a corporation are of so complicated a nature that the blank furnished does not permit of making a sufficiently intelligible report, a sworn statement may be attached to and made a part of the report, explaining whatever may require explanation.

On filing reports it is advisable for the officer transmitting the same to enclose therewith a postal card, addressed to himself, and acknowledging the receipt of the reports enclosed, to serve as a receipt. Having filed a report, no further attention need be paid to the same, as settlements are not made by the accounting officers according to any system of priority of settlement. When settlement is made, the company will be advised of the fact by the receipt of a copy thereof, after the receipt of which the corporation has sixty days within which either to pay the tax, or, if dissatisfied with the settlement, to appeal therefrom to the Court of Common Pleas of Dauphin County. On the receipt of the copy of a settlement, if the same be not readily understood, it should be compared with the copy of the report upon which it is made, retained by the company, and an effort be made to ascertain the basis upon which it is made, instead of at once writing to the Auditor-General's Department for an explanation. Much time and cor-

respondence may often be saved by resorting to this method. If, on a comparison with the copy of the report, the settlement cannot then be understood, a letter of inquiry may be addressed to the Auditor-General, asking upon what basis the settlement was made. Upon the receipt of an explanation it may appear that the report upon which the settlement was made was incorrect, or that it was misunderstood, in which case the officers of the company should file a sworn statement, setting forth the correct state of facts, or giving the necessary explanation, with a request for a resettlement. This should not be put off until the time for taking an appeal has expired, nor until the year's time within which the Auditor-General's Department may make resettlements, only, has elapsed. If the Department declines, on the receipt of such sworn statement, to resettle the account, an appeal may be taken to the Court of Common Pleas of Dauphin County.

Forms of appeals are not furnished by the Auditor-General's Department, but must be prepared in each case, setting forth the grounds of objection to the settlement. The appeal is sent to the Auditor-General, by whom it is filed with the prothonotary of said court. A bond in double the amount involved must be filed with said prothonotary within ten days from filing the appeal. It is customary to pay to the State Treasurer the amount admitted to be due, in order to save the twelve per cent. interest thereon.

The word "settlement," as used in acts of Assembly and by the accounting officers, does not mean the payment of an account, but signifies the statement of an account made by the Auditor-General and State Treasurer. When a company is informed, therefore, that its capital stock or other tax for a given year is "settled," it means that the amount of such tax has been ascertained by the accounting officers, and stated in an account by them; not that it has been paid. This explanation seems to be necessary, judging from the frequent misunderstandings of the term by officers of corporations.

Receipts for all remittances are furnished by the State Treasurer, to whom all payemnts should be made and to whose order all cheques should be drawn, and these receipts should be attached to the copies of the settlements in payment of which they are sent. A complete voucher for the transaction is thus made.

The officers of manufacturing corporations are required to make reports of capital stock and loans precisely as other corporations, and are taxable on so much of their capital stock as is invested in property not esseutial to, and not actually used in, their manufacturing operations. They are also required to collect and pay the State tax on their loans and bonded indebtedness like other companies. Many officers of such companies seem to believe themselves relieved from all requirements of either making reports or paying taxes.

Where corporations are in the hands of a receiver or an assignee,

their reports should be made for them by such receiver or assignee, instead of by their regular officers.

In cases where it is desired to dissolve a corporation, the officers of such company should inquire of the Auditor-General what taxes and reports are due by it. On being informed, they should promptly make the reports indicated, and pay the taxes settled thereon, together with such other taxes or bonus as may be due by the corporation, and thereupon a certificate, signed by the Auditor-General, State Treasurer, and Attorney-General, is issued to them, setting forth that all taxes due by said company have been paid. This certificate is required by law to be filed with the petition for dissolution. Where, however, it is desired to dissolve a corporation not subject to State taxation, such as a corporation formed for literary, religious, or social purposes, the Auditor-General will furnish no certificate that all taxes due by it have been paid, because he has no official knowledge of such corporation. The proper way, in such cases, is to suggest to the court before which the application for a decree of dissolution is made, that the company is not one subject to State taxation, when the filing of the certificate will be waived. At least, the writer knows of no case where a court has refused, upon proper representation, to waive the filing thereof. Upon the issue of a decree of dissolution, a copy thereof should be filed in the office of the Auditor-General. Where any considerable time elapses between the receipt of a certificate that all taxes have been paid and the application to court for a decree of dissolution, reports should be made and taxes paid for the period between the date of the certificate and the date of application for a decree, when a new certificate will be issued.

Taxes are a lien on the property of the company owing them, and a corporation buying the property and franchises of another company is required to pay all taxes due by said company, and to make all reports for which it may be in arrears. A purchase of such property and franchise at judicial sale relieves the company purchasing from liability for any bonus that may have been due by th ecompany so sold; whether it relieves it from any taxes due thereby and from the necessity for making such reports as may be due by it is not so certain. See page 20.

The State Treasurer does not receive postage-stamps in payment of taxes or other debts due the Commonwealth. Officers of corporations will, therefore, save time and correspondence by remitting small sums in cash or by postal-orders or cheques.

It would seem unnecessary to suggest to the officers of corporations that they should, in writing to the Auditor-General's Department for information concerning their respective corporations, not fail to mention distinctly the names of their companies in their letters. Experience shows, however, that fully three per cent. of the letters received at said Department omit this very important information. Corporations cannot be referred to from the name

of an officer thereof, and so, in such cases, a letter of inquiry is made necessary, with expenditure for postage, and, alas, too often, the expenditure of "words that burn," or at least have a tendency to make those who use them to do so, ultimately.

Another thing which is to be avoided is, the writing about the affairs of one company on the letter-head of another corporation. This often leads to provoking mistakes. If a proper letter-head cannot be had, it is better to write on paper without any printed heading whatever than to use the letter-sheets of another company. This may prevent John Smith, who writes to know about the affairs of the Podunk Ferry Company, from being enlightened, instead, as to the status of the Bungtown Savings Institution.

Copies of reports made by a company to the Auditor-General's Department for purposes of taxation will be furnished to the officers of the company making the reports, and to stockholders of such company, on their satisfying the Auditor-General that they are such stockholders, and that the copies are desired for their sole information. Such copies of reports will not, however, be furnished to others. Where they are desired for use in litigation a subpœna must be obtained and served upon the Auditor-General, requiring the production either of the original report or of a copy thereof.

Reports made to the Auditor-General for purposes of taxation are *not* "public records," as that term is usually employed, and in the sense that the records of registers of wills or recorders of deeds are public records. The said reports are made *only* for purposes of taxation. They necessarily contain a great deal of information which the companies making the same do not care to have made known to the public nor to their competitors in business, and hence they are treated as confidential communications.

The fee for a certified copy of a report will average one dollar. No charge is usually made for uncertified copies of reports furnished to the companies originally making them, unless copies of a large number of reports are required, when a proper charge is made to cover the loss of time to the Commonwealth of the clerks employed in making the same.

On the incorporation of a company it is an excellent thing for its treasurer to open a small account book wholly devoted to taxes and associated subjects.

In the front part of such book one or more pages should be left unruled, to be headed "Registration, Notices," etc., upon which should be entered the date of registering the company in the Auditor-General's Department, date of notification of changes of officers, of changes of principal office, or of changes of time of yearly meetings, etc. Should an attempt be made to impose the penalty of $500 for failure to give any of these notifications, a record will be at hand to show the date of mailing such notices.

Accounts should then be opened on separate pages with bonus

(if the company is one subject to the payment thereof), with capital stock tax, loans tax, and an account with gross receipts tax, if the company be a transportation, transmission, or electric light company, or an account with gross premiums tax, if the company be a non-mutual insurance company. These accounts should be ruled so as to leave columns at the left for the year for which the tax is due (or in those accounts for gross receipts and gross premiums tax for the periods of six months, respectively, for which tax will be settled). Then a space for entry of date of mailing report, a space for entry of date of receiving copy of settlement, space for entry of tax, space for date of payment, column for amount of payment, and a column wherein to note date of receiving the State Treasurer's receipt for the tax. A column for the numbers of the cheques may be also left.

The left-hand column for the years, or periods of six months for which taxes will be due, should be filled up for some years ahead when the account is opened, for the following reason. Companies sometimes neglect to make reports for a given year; but, on receipt of blanks on which to make reports for the year following, fill the same up, and then go on regularly, overlooking the fact that they have omitted to report and pay tax for a given year or period. Usually their attention will be called to this oversight by the Auditor-General's Department, but not, perhaps, until some time after the period when the report should have been made. On the receipt of such notice the company is inclined to believe that it has made all reports called for, and hence a long and unnecessary correspondence on the subject is begun. If the dates are entered as above, before any taxes are settled, the person keeping the book, when he comes to enter the taxes for 1900, may find that the line devoted to 1899 is blank, and he will, therefore, know that the company omitted to make report for that year, and will proceed to supply that deficiency.

Any book-keeper can readily prepare such a small book of accounts, the keeping of which will give at a moment's notice the full tax history of the company; will show everything that is necessary to be known before making reports for a given year; will show whether the taxes are greater for one year than another, and so on. Much time and unnecessary correspondence will thus be saved, not only to the company but to the accounting officers.

CHAPTER XXI.

HINTS TO LEGISLATORS.

A NUMBER of years' experience as a clerk in the Department of the Auditor-General has demonstrated to the writer the desirability of certain legislation. Only similar experience can demonstrate the necessity therefor. These matters would not be at all likely to occur to persons unfamiliar with the workings of that office. The writer, therefore, does not think himself guilty of presumption in pointing out a few matters upon which legislation is very desirable.

Tax on Corporate Loans. The obligations of corporations should be made taxable whether interest is paid on such obligations, for a given year, or not. We have already seen that the Supreme Court has held in Perry County *v.* Troutman, 144 Pa., 361, that personal property held by an individual must be returned to the local assessor for taxation, whether interest is paid thereon or not. But as the tax on corporate loans is collected from the interest paid on such loans, it is evident that no tax can be collected for a year in which no interest is paid. It has been attempted to get around this by requiring, in the Personal Property Return Blank, taxables to include, in their returns to the local assessors, the obligations of corporations, on which no interest has been, or will be paid, during the tax-year. We have already shown the difficulty of obtaining the tax in this manner (see pp. 154 and 155). It should be enacted that when the treasurer of a corporation pays interest in a given year, which has accrued in prior years, he shall deduct four mills on each dollar of the nominal value of said indebtedness for each year during which the said tax accrued, during which years no tax was paid on said obligations.

Corporate Loans Held by Persons Whose Residence is Unknown. Much litigation has arisen over the attempt to levy the State tax on corporate loans held by persons whose residence cannot be ascertained. It should be enacted that the treasurer of a corporation, on paying interest on its obligations, shall deduct the tax from such interest, not only in the cases of obligations held by residents of Pennsylvania, but also in the cases of all obligations the holders of which are not positively known to be non-residents.

In other words, all obligations should be taxed unless they are affirmatively shown to be held by non-residents.

Bonds, Mortgages, etc., Held by Manufacturing Corporations. The liability of manufacturing corporations not engaged in the manufacture of liquor nor having the right of eminent

domain, to taxation on the bonds, mortgages, etc., held by them, heretofore discussed, should be definitely settled by providing that so much of the capital stock of such manufacturing corporations as is invested in bonds, mortgages, etc., shall be subject to the State tax on capital stock, and that such corporations shall then be exempted from all further taxation of any kind on the bonds, mortgages, etc., themselves, held in their own right and in which a portion of their capital stock is so invested.

Payment of Portion of Tax on Foreign Fire Insurance Companies to Cities and Boroughs. The Act of June 28, 1895, providing for the payment to cities and boroughs of one-half the tax paid on their premiums by foreign fire insurance companies (if, indeed, it should not be wholly repealed on account of frittering away in small sums, which can do little good, an amount which is respectable in the aggregate) should be so amended as to state distinctly the purpose for which the money paid under the act shall be used and how it shall be disbursed.

Sales of Franchises and Property of Corporations. Sheriffs and others who are required to sell the property and franchises of taxable corporations at judicial sales should be required by law to give the Auditor-General so many days' notice of the intended sale, in order that that officer may, if it be desirable, file liens for any taxes due the Commonwealth, as provided in the Act of 1827.

To Compel the Winding Up of Moribund Corporations A stringent law is required to compel the proper winding up of the affairs of corporations, instead of permitting them to die out, owing taxes. Many a company does no more than to take out a charter. Accounts are opened with it on the books of the accounting officers; but attempts to obtain reports are useless. The officers leave the State, or refuse to receive blanks for reports, or write back that the company is dead, and refuse to give further information. A good plan would be to require the treasurer of every corporation formed for profit, before the issuance of the company's charter, to file with the Attorney-General a bond in a certain sum, conditioned on his making all reports of the company required by law, and, if the company shall not proceed to business, or if it shall go out of business after a time, to take the necessary measures to procure, and to procure, in fact, its legal dissolution. Such a measure might prevent the formation of a few insignificant corporations, but it would certainly result in keeping the accounts of corporations up to date on the books of the accounting officers, and would give such officers due notice of the demise of such companies.

Penalty for Not Registering in the Auditor-General's Department. This penalty, now fixed at $500, is so large, that it is almost impossible to get any one to impose it, or, if imposed, to insist upon its collection. If the penalty were reduced to $50 it would be imposed and collected, with the most salutary results.

Certificates to the Auditor-General's Department. A law requiring the Secretary of Internal Affairs to certify to the Auditor-General all notices of the dissolution or leasing of railroad or other companies within the province of his Department, and a similar requirement that the Commissioner of Banking shall certify, in the same manner, all notices of the dissolution of building and loan associations, is desirable. This information, it is true, appears in the reports of those officers, but it is desirable that it be given to the Auditor-General, from time to time, as it is acquired by the officers named.

Bonus. The Act of 1897 relates only to corporations formed under the Act of April 29, 1874, or its supplements. This should be so amended as to make its provisions applicable to all corporations whatever heretofore required to pay bonus.

Foreign Building and Loan and Investment Companies. These companies, although they have no capital invested in the State, as a general rule, and pay no taxes whatever (except as to building and loan associations which are now subject to the new tax on matured shares of stock, which tax is, however, really on the resident holders of such matured stock and not on the foreign building and loan associations themselves), annually take millions of dollars from out the State, which otherwise might have been profitably invested here. There is no good reason why they should not pay for this privilege, if indeed prohibitory taxation should not be imposed on them. The writer prepared some years ago, at the instance of Senator Gobin, a bill requiring such corporations to pay an annual license fee of $500, from which fee might be deducted the amount of any taxes paid by them on their capital stock, if any, invested in this State; but although reported favorably from the House Committee, and, as the writer thinks, it passed the House, it failed to pass the Senate. Something ought to be done in this matter.

Ferry Companies. If it can be done, agreeably to the Constitution, ferry companies should be relieved from all State tax. These companies do not usually have more than five hundred dollars of capital stock and their receipts will not average much above one hundred dollars per annum. Ferries are public conveniences; they are usually conducted by hard-working men, whose toil is not any too well compensated as it is, and when it is considered that the cost of collecting the taxes from this class of companies nearly, if not quite, eats up the entire amount collected, it seems that the State can very well afford to forbear to demand a portion of their small earnings. If such an act were passed it is not likely that any one would care to raise the question of the constitutionality of it, and, were that point raised, the writer cannot see why ferry companies may not be relieved from taxation as constitutionally as manufacturing companies are exempted.

Tax on Mining of Coal. Should it become necessary to raise

greater revenue, no good reason is apparent why a small tax should not be levied on every ton of coal mined in this State. Every ton taken out of the ground decreases by so much the natural resources of this State, and why a small equivalent for this diminution should not be paid is not apparent. Coal companies pay a tax on their capital stock, which covers the amount they have invested in their business, and to a certain extent, their prospects for making money on account of the mass of coal which their mines are supposed to yet contain, but they are not taxed on the value of the coal itself, and the State of Pennsylvania ought to receive something for the annual diminution of her natural resources.

Office License Law. The Act of June 7, 1879, imposed a general license fee on all foreign corporations doing business in this State, and having no capital stock which could be taxed, invested therein. This provision was repealed before it had been in existence long enough to enable a proper judgment to be made as to the working of the system. It does not seem right, however, that a foreign company paying no taxes whatever in this State should come into competition with domestic corporations which bear all the burdens of State taxation. Some kind of a charge, such as will not interfere with the interstate commerce clause of the Constitution, should be imposed.

Electric Light Companies. The Act of June 1, 1889, both relieved artificial gas companies from the tax on capital stock (while their competitors, the electric light companies, remained subject thereto), and, at the same time, saddled said electric light companies with the tax on gross receipts, which, up to that time, had been paid only by transportation and transmission companies. Thus electric light companies now have to pay both tax on capital stock and tax on their gross receipts, while artificial gas companies are wholly exempt from all taxes (the tax on their loans not being on the company, which acts only as the collector thereof), except on so much of their capital as may be invested in property not actually used in manufacturing their product. These companies perform practically the same kind of functions, and it is inequitable that one class should be so much more heavily taxed than the other.

Bankrupt Railroad Companies. It may happen that a railroad company's capital stock may be practically worthless, owing to the debts of the company and the unprofitable nature of its business. In such case no capital stock tax will be paid to the State. Its bonds may all be held without the State, and hence not be subject to taxation here. Its roadbed, rolling-stock, depots, etc., cannot be taxed locally, because they are essential to the exercise of its corporate franchise. The company will, it is true, report and pay tax on its gross receipts, but that is a franchise tax and not a property tax. The company may, therefore, have property to the value of millions of dollars, upon which, as above shown, it

cannot be taxed at all in this State. This is an extreme case, and probably no exactly similar one has occurred, but in not a few instances the value of the capital stock is so small, and so many of the obligations of the company are held by non-residents, that but a very small amount of tax is paid, while the companies concerned have large amounts of property. There should be legislation to cover cases like this, whereby the property of corporations so situated might be taxed on something like its real value. It is proper to say, however, that if the Supreme Court approves of the reasoning of Judge Simonton, in his opinion in Com. *v.* N. Y., Pa., and O. R. R. Co., referred to on page 45, the necessity for such legislation will be in great measure obviated.

The lack of existing legislation to cover such cases is the fault of no one; such omissions exist in all tax systems; but cases like this have done duty in many a political speech, as demonstrating the great tenderness with which the dominant party in the State treats corporations; whereas, it is a fact that corporations are taxed in this Commonwealth perilously near the "last straw" point.

ADDENDA.

Private Bankers and Brokers to Register in the Department of the Auditor-General. The Act of May 16, 1861 (P. L., p. 708), which, as we have already seen, on page 113, was amended as to its first section by the Act of June 27, 1895 (P. L., p. 396), was further amended by said Act of 1895, as to its other sections, in the following manner:

"Section 2. That every *stock broker, bill broker, exchange broker,* and *private banker* in this Commonwealth, whether the business be conducted by an individual or more than one person in partnership, shall, within three months after the passage of this act, and all others who shall hereafter engage in such business in this Commonwealth, *within sixty days* after they commence the same, *make a report* to the Auditor-General, in writing and under oath or affirmation, setting forth the name of the person so employed, if an individual, or if a partnership, the names of all the individuals composing the same, and the name of the firm, the location or place where such business is transacted, and the amount of capital invested therein, if any.

"Section 3. That any such *stock broker, bill broker, exchange broker,* or *private banker* in this Commonwealth who shall neglect or refuse to make the return and report required by the first and second sections of this act shall, for every such neglect or refusal, be subject to a penalty of *one thousand dollars,* which penalty shall be collected on an account settled by the accountant officers as taxes on bank dividends are now settled and collected, and shall not be relieved from paying the amount which he is liable to pay to the Commonwealth under the provisions of the first section of this act on account of his having been required and compelled to pay the said penalty."

Exemption from Local Taxation of Public Corporations. A court of equity will restrain by injunction the collection of a tax assessed upon the real estate of a natural gas company where the evidence shows that the land is part of its capital stock, upon which it pays a tax to the State, and is necessary and indispensable to carrying out the public purpose for which the company was incorporated. Gas Company *v.* Elk County, 168 Pa., p. 401.

A public corporation is one which cannot carry out the purposes of its organization without chartered rights from the State. Railroad, canal, and gas companies must have the right of eminent

domain in order to perform their functions. Their property, which is indispensable to their chartered rights, is represented by their capital stock, and as such is taxed specially by the Legislature, and the law will not subject it to a duplicate taxation by mere inference. Schuylkill County *v.* The Citizens' Gas Co., 148 Pa., 162.

The property of canal and railroad companies and other *quasi* public corporations, necessary for the exercise of their several franchises, such as depots, toll houses, and water stations, is not taxable for local purposes. The reason for this exemption is, that these things enter into the very composition of the works of these corporations and are essential to the exercise of their corporate functions, and for this reason are taxed by the State as included in the capital of the said corporations. Northampton County *v.* Easton Passenger Railway Co., 148 Pa., 282.

Act Giving the Court of Common Pleas of Dauphin County Jurisdiction in all Cases in which the Commonwealth is Plaintiff. The Act of April 7, 1870 (P. L., p. 57), provides:

"Section 1. That the Court of Common Pleas of the County of Dauphin is hereby clothed with jurisdiction, throughout the State, for the purpose of hearing and determining all suits, claims, and demands whatever, at law and in equity, in which the Commonwealth may be the party plaintiff, for accounts, unpaid balances, unpaid liens, taxes, penalties, and all other causes of action, real, personal, and mixed.

"Section 2. For the purpose of collecting any penalty, balance, debt due, or other demand of the Commonwealth, a writ of foreign attachment may issue against the property, real or personal, of any non-resident defendant or defendants; and the same shall be executed and proceeded in as other cases of foreign attachment are now prosecuted under existing laws, except that no bail shall be required by the sheriff to whom said writ shall be directed, and the Commonwealth shall not be required to give any bond or recognizance prior to the execution of any final process.

"Section 3. That in all cases where any debtor shall suffer any claim now due to the Commonwealth to remain unpaid for the space of sixty days after the approval of this act, and in all cases where any future debtor shall suffer any claim of the Commonwealth to remain unpaid for sixty days, there shall be paid by said debtor or debtors a commission of five per cent. to the counsel or attorney for the Commonwealth, which shall be charged in addition to any interest or penalties payable under existing laws; Provided, that no greater amount than seven thousand dollars be paid for professional services during any one year, and that any surplus shall be paid into the State Treasury."

Civil Causes May be Tried Without Juries. The Act of April 22, 1874 (P. L., p. 109), does not relate especially to the

trial of Commonwealth causes, but as almost all tax cases are tried without a jury, under the provisions thereof, a portion of the act is here given:

"Section 1. That in any civil case now pending in any of the courts of this Commonwealth, or hereafter to be commenced, after issue joined, the parties thereto, excepting those acting in a fiduciary capacity, may, by agreement filed in the proper office where such suit is pending, dispense with trial by jury, and submit the decision of such cases to the court having jurisdiction thereof; and such court shall hear and determine the same, and the judgment shall be subject to writ of error or of appeal as in other cases in law or equity, at the option of either party."

Section 2 provides that the decision of the court shall be in writing, and, with the other sections of the act, provides the methods of procedure in such trials and in taking appeals from judgments given thereat.

Indebtedness of Limited Partnership Associations and Joint-stock Associations. The fourth section of the Act of June 30, 1885, creating the tax on corporate loans, refers only to the loans and bonded indebtedness of *corporations*. Hence the obligations of limited partnership associations and of joint-stock associations are taxable in the hands of the holders thereof, precisely as if they were given by individuals; and the treasurers of said associations are not required, therefore, to make any reports of such loans to the Auditor-General, nor to deduct any tax from the interest paid thereon. The holders of such obligations include them in their returns of personal property made to the local assessors.

Insurance Companies Expressly Relieved from Tax on Net Earnings. Insurance companies, without capital stock, but yet receiving premiums, upon the gross amount of which they are taxable, were not expressly relieved from the tax on net earnings or income until the passage of the Act of June 1, 1889, Sec. 27. See Com. *v.* Penn Mutual Ins. Co., Dau. C. P., 1888, No. 592, June T.

FORM OF APPEAL TO THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, FROM SETTLEMENTS FOR TAXES MADE BY ACCOUNTING OFFICERS.

In the matter of the account for tax on for the year ending , amounting to $, settled against the Company by the Auditor-General of Pennsylvania, 189 , and approved by the State Treasurer 189 , a copy of said account being hereunto attached:

The said Company hereby appeals from said settlement of its account to the Court of Common Pleas of Dauphin County, and files the following specifications of objections thereto, agreeably to the provisions of the act of Assembly in such cases made and provided.

[Here insert specifications of said objections.]

It is not customary to verify appeals by affidavit, but it seems to the writer that the better way would be to so verify them as in the case of ordinary pleadings.

FORM OF BOND TO ACCOMPANY AN APPEAL FROM A SETTLEMENT MADE BY THE ACCOUNTING OFFICERS, TO THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY.

(Title of Cause.)

Know all men by these presents, that we, the Company and E. F. and H. G., all of the county of , are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of dollars, lawful money of the United States, to be paid to the said Commonwealth of Pennsylvania, to which payment well and truly to be made and done we bind ourselves and each of us, his heirs, executors, administrators, and successors, and every of them, firmly by these presents. Sealed with our seals and dated this day of , 18 .

Whereas the above bounden Company hath appealed to the Court of Common Pleas of Dauphin County from a settlement made against the said company by the Auditor-General, on the day of , 18 , and approved by the State Treasurer on the day of , 18 , for tax on , for the year . Now the condition of this obligation is such that, if the said Company shall prosecute such appeal with effect, and pay all costs and charges which the court or arbitrators shall award, and also pay any sum of money which shall appear by the judgment of said court, or award of arbitrators, to be due by it to the Commonwealth of Pennsylvania, then this obligation to be void; otherwise to be and remain in full force and virtue.

This bond must be filed within ten days from date of filing appeal. Its sureties should be approved by the judge of the Court of Common Pleas of the county in which they reside. The Court of Common Pleas of Dauphin County will accept such approval, and itself approve thereof.

Payments by Notaries Public for Their Commissions. "The Governor is hereby authorized to appoint as many notaries public as in his judgment the interests of the public may require; Provided, that before any commission shall be issued under this act, a receipt from the State Treasurer shall first be produced showing the payment of twenty-five dollars into the State Treasury for the use of the Commonwealth." Act of February 19, 1873 (P. L., p. 36).

Act of June 7, 1897 (P. L., p. 135), Imposing a Tax on the Wages of Unnaturalized Persons.

"SECTION 1. That from and after the passage of this act all corporations, associations, companies, firms, or individuals employing persons who are not citizens of the United States shall, upon the receipt of a written notice from the tax collector of the county or district in which such taxes was [*sic*] assessed, containing the name or names of the taxable or taxables, and the amounts respectively due, deduct from the wages or earnings of such employé or employés, a sum sufficient to pay the respective amounts of taxes assessed against such alien employés, and pay the same to the collectors of the district in which said aliens are employed within sixty days after said notice shall have been given.

"SECTION 2. Any corporation, association, company, firm, or individual failing to comply with the provisions of this act shall

forfeit and pay the sum of double the amount of the tax for each and every taxable whose taxes are not withheld and paid over as herein directed, to be recovered by action of assumpsit as debts of like amount are now by law recoverable, and when collected shall be paid into the treasury of the county in which such alien labor is or was employed, for the use of such county.

"SECTION 3. All acts or parts of acts inconsistent herewith are hereby repealed."

The tax created by the above act, being for county purposes only, does not, properly, come within the scope of this work, but, as it has been so recently imposed, and particularly as it has been thought by some to be imposed for State purposes, the act providing therefor is here given. Said act has been held to be unconstitutional by the U. S. District Court for the Western District of Peunsylvania, and an appeal from said decision to the Supreme Court of the United States is understood to be now pending.

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* The writer is unable to find any report of this once important case, the value of which however, was greatly diminished by the passage of the Act of April 20, 1887. The case was decided by the Supreme Court, at Pittsburg, some time in 1886.

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